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Tuesday 18 January 1994

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Journal des débats (Hansard)

Mardi 18 janvier 1994

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government agencies**

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Clerk: Lynn Mellor

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 18 January 1994

The committee met at 1010 in the Ontario Room North, Macdonald Block, Toronto.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Allan K. McLean): I call the standing committee on government agencies to order. I would like to have a motion to adopt the first report of the subcommittee with regard to the subcommittee meeting that was held by conference call on January 6.

Mr Daniel Waters (Muskoka-Georgian Bay): So moved.

The Vice-Chair: All in favour of the subcommittee report? Opposed? The subcommittee report is adopted.

INTENDED APPOINTMENTS

MARGARET STANOWSKI

Review of intended appointment, selected by the third party: Margaret Stanowski, intended appointee as member, Legal Aid Committee.

The Vice-Chair: On our agenda this morning are half-hour reviews of intended appointments. Margaret Stanowski is an intended appointee for the Legal Aid Committee. If you have any opening statement you would care to make, you can proceed. If not, we will proceed with the committee's questions. It was a selection of the third party. Unfortunately, none of the members is here yet. Two of them, I guess, are on the road somewhere. We have about 10 minutes each. Who would like to start?

Mr Waters: Good morning and welcome to the committee. I guess one of my first questions would be, what management skills will you bring to the Legal Aid Committee? Looking at your background, you seem to have a long background that touches with the committee. How will that work with you or make you work better with the Legal Aid Committee?

Ms Margaret Stanowski: I think my résumé does indicate 20 years of managerial and line experience as a staff person and volunteer. I've worked with very diverse social service agencies and correctional agencies over the past 20 years. My skills as an administrator I think have been clearly evident over the years, again in both staff and volunteer positions. I bring strong leadership to a position. I bring fairness, flexibility and certainly thoroughness and responsibility to any position that I assume. I've got a lot of experience in program design, communications and strategic planning, and I believe some of those are key assets in management today.

Mr Waters: This committee is made up of a combination of members you're going to be working with, lawyers and people such as yourself. I imagine it's going to be an interesting committee to be on, but once again I guess it's the strengths that you will need to indeed have the public's perception come in versus, shall we say, the lawyers'. Do you see that as being a difficult thing, to have the public's needs dealt with versus the lawyers', or do you think that will be something you can work quite well together on?

Ms Stanowski: Yes, as a challenge I think you can put it very nicely. I do see myself, in terms of being considered for this position, as being amply qualified to represent the community. I've represented provincial and national constituencies in various positions. I do believe that as a community person who has evidenced a great deal of contributions over the years there is clearly a role for lay representation and that, in my experience in the justice system and certainly having worked with a variety of lawyers in the legal profession, they too welcome balanced input from the community in terms of the very complex responsibilities that face this Legal Aid Committee in the delivery of services to the disadvantaged.

Mr Waters: One of the things that has come up time and again is what people feel are the delays, I guess, in getting through the system and getting approved. There have been two sides to this question. One is that some people say it's too easy and that other people say it takes too long. Is there some more efficient way of bringing the client and the legal aid system together and getting on with whatever the client's needs are?

Ms Stanowski: I do understand that issue is now being concerted and actively assessed right now through the various offices throughout Ontario. I believe some pilot projects would be effective—expeditious yet responsible identification of those who are financially unable to pay for their own legal services. Again, I will confess to not having 100% knowledge of the system; I believe it's certainly very complex. The issue, as I understand it, is, as you mentioned, expeditious identification of those who require financial assistance and yet indeed responsible identification of those in terms of the time that would be necessary to verify income and other assets that may be considered in terms of an eligibility requirement.

I do see it as a balancing situation in terms of not wanting to deny expeditious and timely access to legal services, yet on the other side, in terms of fiscal restraints, due opportunities and due responsibilities and accountability to ensure that the individual is indeed meeting the requirements in terms of financial aid and access to legal services. As I said, I do understand there are some pilot projects through the area offices in Ontario that are looking at that very issue right now.

Mr Waters: I'll turn it over to my colleague Ms Harrington.

Ms Margaret H. Harrington (Niagara Falls): Thank you. Other folks may have questions; I'm not sure.

Certainly in our constituency offices we are faced with these concerns almost every day, certainly every week, when we go home, about people needing and trying to get legal aid. We have a very good clinic in St Catharines, a legal aid clinic, that I use.

Mr James J. Bradley (St Catharines): Can I interrupt you for one second? There are two there. There's the Niagara North Community Legal Assistance, which is

not, I understand, legal aid but a legal-aid-type clinic; and then there's the legal aid office, I guess some lawyer who dispenses it. Which one were you referring to in St Catharines?

Ms Harrington: Actually, the legal aid clinic.

Mr Bradley: Yes, and I agree with you, that's a good service. I just wanted a clarification on the two.

Ms Harrington: What we're finding is that there's just so much pressure for this service, and the money involved is certainly something that our government has to be concerned about. One direction that I think we might be able to look at is alternatives to a legal situation. We might term it a diversion or screening of the cases and finding an alternative way of resolving so that we don't burden the system further. Have you any ideas of how this could be accomplished?

1020

Ms Stanowski: My review of this issue thus far has certainly indicated a primary consideration of containment of legal aid costs while still preserving broad access to legal aid, as well as ensuring high-quality services to those in need of such legal assistance. With that in mind, I understand there have been some pilot projects undertaken in the area of family and refugee law as well as issues I believe the Attorney General is looking at in terms of screening and disclosure issues that would provide for consideration of matters which would go formally before the court, perhaps considering timely diversion or diverting that individual to other alternatives within the community, in consideration perhaps of how resources are being allocated to non-violent offences within this province. You know, containment of the justice system itself is a big issue.

I'm a little aware of diversion projects. I'm working currently on one right now with the director of the justice review in terms of non-violent offenders being diverted from the court system and having their matters assessed within the community so that indeed the matters are seen to be duly dealt with in a responsible and punitive manner, yet again not necessitating the costly resources of the courts.

I do see the directions that are being undertaken right now within the Attorney General's ministry as well as within the Legal Aid Committee itself to responsibly assess alternatives, particularly in view of how non-violent offences are being handled through the formal justice system, again without in any way compromising an individual charged with his rights to access the formal justice system and duty counsel or a defence attorney.

Mr Robert Frankford (Scarborough East): It seems to me that in the area of, supportive legal papers, there's legal aid, there are community legal clinics that have been referred to. I know this is not quite the same, but I think it's an interesting development, the legal plans which I think the auto workers, for one, have developed.

I know this may be into a somewhat different field, but I'm wondering whether there should be some sort of coming together of all these alternatives and whether you have any thoughts about a development of some sort of integration of the ways in which people can have assist-

ance with their legal costs or some sort of prepayment for legal matters when they arise.

Ms Stanowski: Just to ensure that I'm aware of your question, as I understand, there are 71, soon to be 72, legal clinics within Ontario.

Mr Frankford: Community legal clinics.

Ms Stanowski: Yes, which would be separate from the certificate side, as I understand. From what I'm gathering, the clinic side would be separate from responsibilities. If I indeed receive this appointment to the Legal Aid Committee, clinics would act as providing more legal public education, law reform to the legal welfare of the community. They would indeed refer over to the legal aid area office for consideration for a legal aid certificate so that they could access a lawyer of their choice.

I believe that when you're looking in times such as we're experiencing today, in this era of very severe limitations, all creativity is necessary in assessing how legal aid services are delivered in this province. Containment of costs, preserving access to lawyers of those who are unable to pay and ensuring that they're of high quality are very important issues as we assess and review various options and alternatives.

My experience has demonstrated that pilot projects have proven to be quite successful in assessing the results of various initiatives over a period of time. So while you are assessing a variety of factors in terms of changing a system, piloting them in various geographical and culturally and linguistically different areas, you will then be able to learn and apply those results to an assessment of potential change to the system.

I also understand there are certainly a number of external factors that are affecting how we contain costs and how we review costs within the legal aid system. Certainly the recession is creating a higher need for legal assistance in terms of those falling under social assistance and under the low-income wage. We're seeing various legislations that affect delivery of legal aid services. The Young Offenders Act is a good example of that. We see an increased number of refugees, given the Immigration Act, increasing crime rates and rigorous prosecution of spousal assault cases.

I think when we're assessing change and how to manage change, we assess the external and the internal considerations that are affecting how we contain and possibly review potential changes to a system that has been in existence I believe since 1967.

Mr Bradley: We get a lot of calls in our constituency offices from people who are concerned about government expenditures these days and various instances they bring to our attention. We get them from two different sets of people, those who require the services and those who are annoyed that any services are provided. Do you believe it is a good use of the taxpayers' money to have two people who are going through divorce proceedings both being funded by the taxpayer?

Ms Stanowski: Again, I think the fundamental principle here is a preservation of the individual's right to legal services in terms of the issues that would be affecting litigation. The requirements for assessing

financial eligibility would apply equally to both the husband and wife. If there is a determination of financial eligibility, I could see it's a matter that would have to be duly considered by the area office. I think we are experiencing that, from what I'm gathering. I'd like to review some of the issues that would be affecting that system, the public reaction in terms of concerns that a husband and wife would both be accessing legal aid. Again, I'd like to further consider that and review the issues.

Mr Bradley: It may be we will reach a situation, because the economic difficulties are obviously great in this province and in other jurisdictions, where we will be weighing, much as we detest having to do so, the right, as you have stated, to counsel for each individual against the right of an individual to have radiation before the cancer has spread into the lungs from the throat or wherever it spreads. It's a very difficult thing that governments have to go through now and that's why the questions are asked. In the best of all worlds, everybody should have that right. We now don't live in the best of all worlds. That's why I asked that particular question, how that's weighed. It comes to a second question of verifying who actually needs legal aid.

There are a lot of people, by the way, who would object to the taxpayer paying for two people fighting maritally and they're paying for lawyers for both sides. There are a lot of people who are objecting to that today, while they can't get what they would consider to be the best of health care services.

To get back to verification, I watched a television news clip, which means that is the way it is whether we like it or not. The television news clip is what everybody saw; therefore when I have to discuss it with my constituents; I have to discuss the television news clip. It showed, whether it was on CITY TV or some other television station, that they came in, they got their legal aid certificate and nobody asked them any questions apparently, or there was at least no verification of that. Yet I see in some cases, to speed up the system, there's talk that if a person has a low income, you don't even have to go through that verification. Aren't we going to have to come up with some kind of verification or have a total revolution against legal aid?

Ms Stanowski: I understand the Provincial Auditor raised some of these issues in terms of verification, in one instance through a bank receipt or an automatic teller receipt. From what I'm gathering, again in terms of my preliminary overview of the issues affecting the system right now, there is certainly very much of a need to standardize the financial eligibility requirements for individuals applying. I think clearly there's a balance here in terms of responsible management of public funds. The issue here is ensuring that area offices are applying the same principles and the same standards in verifying whether a person is indeed eligible, balancing, on the other side, expeditious yet responsible access to legal services that would not undermine the time it would take to verify the assets and the income of an individual applicant. I do agree there are two very significant issues that require a great deal of consideration in terms of accountability for public funds.

Mr Bradley: Is there a danger, and I realize there's both a danger and an opportunity, that by providing legal aid as easily as some people in the province think it's provided, we initiate a lot more court cases than otherwise would be initiated?

Ms Stanowski: That could be a perception by the public. I think certainly public education plays a role in this in terms of access to formal judicial services. I believe that issue is of significant concern right now to this government in terms of various investment strategies that are being undertaken so that we do indeed contain the growth of the justice system.

1030

Various auditor reports that I've reviewed have got a lot of those concerns in terms of the swelling of the justice and the court systems. My facts suggest that 85% of the individuals appearing before courts right now are there for non-violent offences. That's a very significant factor when we consider how these very expensive costs are being managed to deal with non-violent offenders.

I believe that matter is going to have to be addressed before we see increased growth within our courts and various other aspects: law enforcement, incarceration and various other components of a very costly system in this province.

Mr John C. Cleary (Cornwall): I just have one question: Is it possible that on a harassment case, if an individual is turned down at one clinic, he could go to another clinic and get assistance?

Ms Stanowski: The clinic situation would provide advice and representation, as I understand, in some instances as well as a referral. Are we referring here to a certificate for legal aid or legal advice from a clinic?

Mr Cleary: I would think it was a certificate.

Ms Stanowski: A certificate. As I understand the process, if the area director did deny a certificate to an applicant, there would be redress for that individual, and the redress would occur through the area committee, which would review the decision of the area director of that particular legal aid office. So there would be opportunities. I believe the annual report provides statistics on the cases where decisions made by the area director are overturned through area committees.

I believe it could be possible, but since only one legal aid area office exists in each geographical area of the province, it would be very improbable that the person could access another geographical area if they were turned down for legal aid, given financial eligibility or the fact that the matter may not be eligible under the legal aid requirements. They would have to go through the process of putting their case to area committee volunteers of the region in which they're applying.

That's my understanding. I don't profess to have all of the knowledge with respect to the process in legal aid.

Mr Bradley: Are you having a problem getting lawyers to continue to take these cases on even though we're in difficult economic times? I read in some column—I shouldn't say where it was probably; I thought it was a columnist in the Toronto Star whose views are well known on many issues, Ms Landsberg—that you couldn't

get these lawyers to take certain cases any more. Is that the case or not?

Ms Stanowski: That's, as I understand, a significant issue. From my knowledge, about one third of the lawyers in Ontario are involved in the legal aid plan. With respect to issues with respect to family law, the tariffs are lower, and there are some lawyers, given the cost and eligibility for the tariff under the plan, who would not indeed participate. I do believe, in terms of my own 20-year involvement in working within the justice system, that there is a broader commitment that lawyers can contribute to the community, and by facilitating a broader participation of private lawyers in the legal aid system it would indeed provide high-quality services. I do believe that is an issue before the Legal Aid Committee right now. The column you referred to—I believe it was in Saturday's paper—did clearly point out some of the issues affecting family law currently within this province.

The Vice-Chair: Mr Jackson, any questions?

Mr Cameron Jackson (Burlington South): Yes, a couple very briefly. I apologize for my late arrival. Some of these questions may have been raised.

I'd like to explore the concept of the abuses within the legal aid plan, not by design but by the practice where persons who become eligible in matters of matrimonial dispute and divorce tend to use the plan as a tool to punish someone from whom they are seeking their divorce. We all hear horror stories, because as legislators we always find out after the fact and we always hear the bad cases; we never hear all the good cases that we know the legal plan is capable of.

Do you have any views with respect to the plan as it relates to not being utilized as a cudgel, for want of another word, by one party or the other? What innovative things might be done within the legal scope of practice that deals with mediation in family law matters? I'm seeing a growing incidence of stories that are atypically multiple fronts with issues in a divorce action.

Ms Stanowski: I believe the Family Law Act in 1986 did provide for a number of additional matters in which individuals could litigate. The statistics that I've reviewed show that in those matters of domestic family law 70% of the individuals applying for legal aid assistance are female, compared to 90% under criminal law being male. So I would see that perhaps the women may not have access to additional financial resources to support their litigation in court.

Again, I think there are numerous assumptions about the plan, perceptions perhaps. The material that I've reviewed to date shows that the plan has been subject to a great deal of scrutiny through an Ontario review as well as through a joint federal-provincial review and, most recently, through the Provincial Auditor's report. I believe that was released in December.

I believe that with any system there are going to be issues. I believe the findings that I've seen are that the need for standardization in terms of eligibility financial requirements and for the matter itself were seen to be reasonably well handled. The access to the system appears to be, again, reasonably well managed. I think

the eligibility requirements are being subjected to a great deal of standardization within the 50 area offices within this province and I think that is going to be a challenge for the administration of the legal aid plan, to ensure that there is that standardization and that eligibility does meet the requirements that are set out under the legal aid plan.

Mr Jackson: My question centres on the processes of court reform and who drives that. If the public is willing to pay a lawyer and as long as the state is willing to keep courthouses open, maybe we shouldn't be interfering with how long it takes to process justice. But when the state is paying for both the legal services and the court process, the public generally raises questions about the length.

My question is more tied to court reform in terms of the process within legal aid which allows for protracted legal intervention. I don't wish to get into who is eligible, because that's a matter for review and a matter of checking eligibility, and maybe doing a more thorough job. I'm more concerned about the process that allows sort of a revolving door, utilizing multiple lawyers within the legal aid plan and things of that nature, where it leaves the other party in a wake of extensive legal expenditures because the one party has what some define as a blank cheque. We know it's not that open-ended, but it amounts to a blank cheque under certain circumstances. That was more the focus of my question.

In full acceptance of the multicultural society in which we live, do you support the notion of segregated clinics, targeting certain groups within society? I'd like to know your views on that subject.

1040

Ms Stanowski: As I understand the history and my knowledge of the information clinics, they began in Ontario in 1975. They started off with eight and now are getting close to about 72. The clinics really evolved out of community need and out of community issues.

Mr Jackson: I know the short history. I was basically asking you about clinics which specifically respond solely and exclusively to an identified target group within Ontario, segregated clinics which meet the needs of an individual group, whether they be handicapped, black, defined linguistically. I'm asking your opinion on whether this is a direction you find helpful in Ontario.

Ms Stanowski: My understanding in terms of special-needs populations is that often the mainstream agencies or clinics would not be in a position to deal with the specific issues that would come from those special-needs populations, be they elderly, disabled, linguistic or culturally specific matters. I do believe there has been a history of success in dealing with the special-needs population in Metro Toronto.

The Vice-Chair: Thank you for appearing. I wish you well.

BRENT GIBBS

Review of intended appointment, selected by the official opposition: Brent Gibbs, intended appointee as member, Travel Industry Compensation Fund Board of Trustees.

The Vice-Chair: Next is Brent Gibbs, the intended appointee to the Travel Industry Compensation Fund

Board of Trustees. Mr Gibbs, if you want to avail yourself of the opportunity to have a few opening comments, you're quite free to do that.

Mr Brent Gibbs: I don't have any.

The Vice-Chair: We'll let members ask you some questions. It's the official opposition that wanted this review, the loyal opposition.

Mr Bradley: The loyal opposition? Okay. The first question I have is in regard to what kind of assessment should be made against those who are in the travel industry to ensure that the fund is in fact buoyant. In difficult economic times we're finding more and more businesses are having difficulty, to say the least, and some are in business one day and the next day they're not in business. Then a lot of people have their lives disrupted by that fact.

The first is, what kind of assessment? Do you think there's going to be a need for an increased assessment? Should there be more taxpayers' dollars into this fund? Should it be exclusively an industry fund to compensate those who are left out in the cold, so to speak, when the company collapses and they're left on the shores of Venezuela?

Mr Gibbs: I guess there are two facets to that question. The first is the degree of rigour with which one approaches the entrance of participants into that sector, into the business of travel regulation. It is one of the sectors in Ontario, as I'm sure you're aware, that is regulated by the government. There's a registration requirement for entrance, to come into the system. Those registration requirements include the notion of financial ability to run the organization and past history in terms of criminal activities and things like that. So there is a screen that new registrants and applicants go through to get into the system in the first place.

In fact very recently the regulations have been changed to strengthen the ability of the compensation fund to be a self-managed fund, totally industry supported. There are new regulations that strengthen the working capital that companies have to have at all times. There are new regulations that strengthen the trust requirements so that consumers' moneys are now kept in trust accounts in the travel companies for new registrants or those who are under such terms and conditions. There are increased financial reporting provisions in the new regulations that went into effect December 9, I think, whereby all travel companies have to submit a financial report to the fund, depending on their size of operation.

So I think in that sense both the participants coming into the sector itself and the checks and balances on the current operators are sufficient to maintain it as a viable method of consumer protection.

Mr Bradley: How much of a staff do you think is required? Is there a need, in this world of little money and little staff, for more staff to be watchdogs? Or do you think the present staff who administer through government is sufficient, to your knowledge?

Mr Gibbs: The compensation fund itself is not part of the civil service proper, as you probably are aware. They have a staff of five individuals, which seems to be

sufficient currently to run the administration of the fund. The regulation of the travel sector itself is divided between government proper and the compensation fund. That would seem to be sufficient, as far as I'm aware, for processing the claims and doing the work they do.

Mr Bradley: Does the fund deal almost exclusively with collapsing companies and people caught at one end of the country or another, or maybe out of the country, maybe one end of the province or the other, or does it get into the details of whether they're providing an honest service to people? Does the fund get into that at all?

Mr Gibbs: The fund does not get into the honest service part with the exception that there are the financial reporting requirements. There are trusting requirements now in terms of consumers' money, and that would be a function of the fund to monitor that in the financial reports. The honest service? The ministry regulates the travel sector from the perspective of advertising and other aspects of the travel industry.

Mr Alvin Curling (Scarborough North): Thank you very much—

The Vice-Chair: Thank you. Mr Curling, you have gone over your time by two minutes.

Mr Curling: Who has?

The Vice-Chair: Your caucus has. We'll move on.

Mr Curling: I had a wonderful question.

Mr Bradley: Tell Liz what it is; she'll ask it.

Mrs Elizabeth Witmer (Waterloo North): Do you believe that the compensation fund at the present time does adequately protect all consumers in this province?

Mr Gibbs: Yes. Obviously you can't provide total wide-ranging protection. There are end-service deliverers, whether they're cruise lines or hotels, airlines and that sort of thing, that both do not operate from within the province and are certainly not regulated by the province. Consumers have to be aware that if you book a hotel in a southern climate, that hotel may be out of business tomorrow. We don't regulate that or control that.

What the fund does do is provide compensation and relief for businesses that are regulated in Ontario, that do have a problem and go out of business or into bankruptcy or insolvency or something like that.

Mr Jackson: Brent, welcome. I had the occasion to be the recipient of your fund twice in a very short period of time back in the 1970s. Both experiences taught me. In one I received my travel package moneys refunded within about seven weeks and the other one took about a year and a half. So I'm familiar with the concerns about topping up the fund.

I have a couple of questions that flow from that experience. Both instances were late in the season for southern travel. There seems to be a consistency with bankruptcies at the end of the season. You've made all your money and "bang." Can you share with the committee your thoughts around how you might monitor and anticipate when everybody on the street is telling us that something is in trouble with a company?

I understand you can't pre-empt it, but is there anything you can share with the committee about the high

incidence of failure at the end of the season when it's also the time when it's hard to increase your rates and pass it on to an industry that has to go through its hiatus?

Mr Gibbs: Sure. As I mentioned, there are new regulations that went into effect this December that improve the financial monitoring process, which is really the only vehicle that exists right at the moment to deal with the problems you mentioned. The monitoring process requires the largest of the companies now to provide financial reports on a quarterly basis. That is new. It requires the medium group of companies to provide financial reports semiannually.

I guess it's a balance, as you well know, between intrusion into the business operations of the company and the protection of consumers' money. It's hoped that this kind of regular financial reporting and the trusting of consumers' money, which is also new—mandatory trust accounts for new businesses—will have a big impact on both preventing unknown bankruptcies and protecting consumers' money.

The third area that the government certainly is looking into is a stronger enforcement mechanism for those who go bankrupt under suspicious circumstances. We've had a couple of charges laid recently against companies for either a breach of trust or fraud. When that sort of thing becomes common knowledge, then the companies will be a little more diligent in terms of their financial obligations.

1050

Mr Jackson: Is there any monitoring of changes in labour legislation relating to bankruptcy which pre-empt any securing of funds? I mean, we pay the employees who get isolated first and then there are some outstanding moneys to the fund which have not as yet been contributed. Any thoughts you want to share with us about any improvements that could be made in that area?

Mr Gibbs: I'm sorry; I don't understand that question.

Mr Jackson: More generally, the front-line workers are also victims in this scenario, as well as travellers. There seems to be a tension between compensating those employees who are owed back wages and those persons who are travelling. It's sort of a wide-open question. I'll give you my other question, which is, briefly, the criticism I've heard is people who are able to return to the travel industry in Ontario get licensed and become operational within a very short time after having declared bankruptcy or having wound down their company and left some negative experiences for travellers. Any comments on either of those two areas?

Mr Gibbs: On the first one, I don't think I have a comment in terms of labour legislation, whether that's in fact part of the fund's jurisdiction or whether that's another ministry's jurisdiction.

Mr Jackson: It just bumps you.

Mr Gibbs: Yes.

Mr Jackson: Every time we adjust something for the benefit of the employees, it may affect the ability to compensate because of the access to the fund.

Mr Gibbs: Yes.

Mr Jackson: Thank you. It's been very helpful.

The Vice-Chair: Members from the government may have some questions.

Mr Waters: I'll start. You're part of the OPS?

Mr Gibbs: Yes, I am.

Mr Waters: I guess I'd like you to go into why a civil servant is a member. I'd like to get that very clearly on the table. I know you're replacing a person who was a civil servant. Could you expand on that?

Mr Gibbs: The regulation of the travel sector is a divided responsibility. The fund itself, which is not part of the civil service, has a responsibility for managing the compensation fund, for receiving the financial reports of the participants in the industry and monitoring those financial reports and that sort of thing.

The government proper runs the registration system and monitors entrants into the sector itself. Because of that division of responsibility, it's obviously necessary to have a great deal of contact and liaison and alignment of effort between the two organizations. The ministry representative, who is certainly at this point in time the only civil servant on the board, is to make sure that the ministry is aware of policy issues as they come to the compensation fund board, to make sure the ministry's ideas are represented and to carry issues from the board back to the ministry in terms of their administration.

At the staff level, there's an enormous amount of contact and virtually daily working between the staff managing the administration of the compensation fund and the staff managing the registration process and the other monitoring processes that go on in the government itself.

Mr Waters: It's entitled to five to nine members?

Mr Gibbs: Five to nine members, I believe, yes.

Mr Waters: How many at the present time?

Mr Gibbs: I don't know that.

Mr Waters: There is a problem with the airline industry and bankruptcies. On the changes that were made, can you go into depth as to why we're no longer covering the airline industry and indeed how these new changes will benefit the travelling public?

Mr Gibbs: Several years ago the federal government completed the deregulation of the airline sector in Canada. Previous to that there were various controls on the industry to make sure there was financial solvency and that sort of thing. When that regulation was eliminated, we found, as you mentioned, considerable numbers of airlines going bankrupt.

The travel compensation fund was intended to compensate travellers from Ontario who dealt with participants who were registered in Ontario—federal airlines are not—so that the compensation fund found itself, I think, paying for travel services which were not delivered, which were the fault of the federally regulated, or in fact other nationally regulated, airline industries. The fund paid out moneys, for example, when Yugoslavia Airlines went out of business—not the intention of the fund. By the way, paying for these airline failures put enormous financial pressure on the revenues and the resources of

the fund. The government has lobbied the federal government for some sort of compensation system when airlines do go out of business or can't deliver the goods, and so far that hasn't materialized.

Mr Waters: And the fund at this point in time has a debt problem?

Mr Gibbs: The fund, as I understand it right now, is slightly over \$5 million in debt.

Mr Waters: And there is a plan in place to bring it back to zero or indeed put it on the positive side of the balance sheet?

Mr Gibbs: Yes. Again, the new regulations were put through in early December as a three-pronged attack on the deficit of the fund. The first is there was an increase of fees from the contributing registrants in Ontario. That increase should amount to somewhere close to a \$1-million increase in revenues each year. That alone, if the status quo were maintained, would eliminate that deficit in about five years. On top of that, the new financial reporting requirements for registrants should very much strengthen the number of participants going into bankruptcy. On top of that, there is a requirement for minimum operating capital. One of the problems with bankruptcies is the moneys paid to the registrant for travel services eventually get used for other things, the operating capital drops to zero or below zero and money that's paid for travel is often used for operating expenses and eventually the company goes into bankruptcy. So now there is a requirement to maintain a minimum operating capital and hopefully avoid some of the bankruptcies.

Mr Waters: The \$1-million increase in fees, the fee structure, is it a flat-rate fee or is it prorated on the size of the company?

Mr Gibbs: It's prorated on the size of the company but it's also based on the dollar volume of total sales, and it's also different for a retailer and a wholesaler. I'm not sure of the numbers but I believe retailers pay \$4 per \$10,000 worth of sales. Wholesalers, the bigger organizations, pay, I think it is, \$16 per \$10,000 worth of total sales.

Mr Waters: And this is the new fee structure or the old one?

Mr Gibbs: The new fee structure.

Mr Waters: What would the old one have been?

Mr Gibbs: I think the old one was \$3 for retailers per \$10,000; that was increased to \$4. I don't recall what the old wholesaler was.

Mr Waters: So although there was an increase, it isn't an increase that will indeed cause harm to the industry.

Mr Gibbs: No, they certainly won't cause harm to the industry. In fact, back in the 1980s when the fund was quite solvent and there was less pressure on the fund, it was a holiday for registrants in the fund.

Mr Waters: Indeed, that's happened in the past and could still happen in the future once they get out of this debt crisis.

Mr Gibbs: If the sector itself becomes less prone to

bankruptcy, if the economy improves and the sector improves, that's a possibility in the future.

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Mr Waters: I gather that this is primarily what you deal with: people who are from Ontario who are vacationing outside of the country.

Mr Gibbs: Yes.

Mr Waters: So these are people who are exporting their vacation dollars.

Mr Gibbs: It provides coverage also for people who are working and who are vacationing in Toronto too, either retail or wholesale.

Mr Waters: That was part of what I wanted to get at. Also, it deals with the domestic market in-province.

Mr Gibbs: Certainly. Oh, for sure, any travel booked through an Ontario registered retailer, travel agent or wholesaler, tour operator, whether it's a northern Ontario trip of some kind or something to Mexico.

The Vice-Chair: Thank you for appearing, Mr Gibbs. I wish you well.

CHRISTINE McMILLAN

Review of intended appointment, selected by the official opposition: Christine McMillan, intended appointee as member, Brock University Foundation.

The Vice-Chair: Next, is a half-hour review of an intended appointment to the Brock University Foundation, Christine McMillan. Mrs McMillan, you have the opportunity to open with a few remarks, if you would like, or we can go right into questions.

Mrs Christine McMillan: I'd like to thank you very much for seeing me this morning and I'm very pleased to meet you all.

The Vice-Chair: Thank you. It's the loyal opposition, the official opposition.

Mr Bradley: Welcome to the committee and good luck in your endeavours because, heaven knows, Brock University can use more money.

With any organization there are amateurs and there are professionals in the field of fund-raising. Many organizations out there end up hiring what are called professional fund-raisers who get a portion of the amount of money raised. Would this foundation be in a position to hire such fund-raisers? In other words, is it going to be legal for you to hire such fund-raisers?

Mrs McMillan: As far as the legality goes, I don't know, but I would certainly hope not.

Mr Bradley: If we were to then have a circumstance where you're going to go out and fund-raise, and that's obviously what you're going to be doing, who would you anticipate would be doing this actual fund-raising? Would it be people from the university itself who are already part of the university or would you anticipate hiring some people? I'm not necessarily saying professional fund-raisers who keep a portion, but hiring some people who perhaps know the committee or who know where the money for education in Ontario might be found.

Mrs McMillan: I think a lot of it is done through volunteer work now. The university has a liaison commit-

tee. Grant Dobson is the head of the public relations committee that deals with this sort of thing. He would know far better than I would. Actually, I have to confess that I know very little about this foundation. All I know about it at the present time is that it is being created so that people can make donations to Brock and that the foundation itself is not part of Brock; it's an autonomous foundation. The reason that it's a crown foundation is because people who contribute to it will receive, I believe, 100% of the donation that they make as a tax deduction in the year that they make it, whereas if they make it through a regular charitable donations route, they get 20%. As far as I know, that's the reason for creating the crown foundation. I believe that Brock has someone waiting in the wings who wants to donate to Brock if we do have a crown foundation.

Mr Bradley: The chairman—it says “chairman” in here so it must have been a man—of the Canadian Federation of Students commented when Bill 68, which enables these crown corporations to be established, was before the House: “I see it as an abdication on the part of the provincial government to fund universities. It could be used as a future excuse to reduce the base level of funding.”

Do you in fact—and you have had long experience in this field of education and on the board of governors of Brock University—see a danger that the establishment of these foundations will in fact reduce the provincial government commitment commensurate with the amount of money that you happen to raise on your own?

Mrs McMillan: Again, I don't know. I don't think that would be the purpose. I would think that the government would be as happy as the university to see donations to the university. We need the money, and the funding that's being received at the present time is—well, I shouldn't say insufficient, because everybody manages with what they have, but we could certainly do with more, as you said earlier.

I don't think the purpose of the government in setting up the crown foundation would be to take money away from the university, but things are tough. I don't know what's likely to happen in the future. Again, I just hope that wouldn't be the case. I think if someone wants to donate to Brock for the sake of the university, then that person is donating to something extra at the university above what would be received in government grants.

Mr Bradley: In terms of how the money is to be distributed, you would be aware, having been involved with the university for a number of years, that there is competition within a university community itself for the various dollars to be expended, and some departments are said to have more clout in the right places than other departments at various universities. How would it be determined how this money would be distributed to the university itself?

Mrs McMillan: You mean, once it's received by the university, what would the university do with it? I noticed that Terry White's name was one of those suggested for membership on the committee. I think it's very important that the president of the universities should be involved. He has the best overview of what's

required for the university.

The rest of us will simply have to do our homework, listen to people, find out what's required and make up our minds, when the time comes, what the best thing to do with the money is. I understand that as an autonomous organization we have the right to decide on our own, if we're members of this crown foundation, how the money should be spent. I think the way we do it is by amassing the greatest amount of information that we can and listening to all the people connected with the university and bending over backwards to be absolutely fair.

Mr Bradley: Could there be a danger out there that while every university is no doubt happy to have this opportunity to raise funds under the new criteria which have been established, would this not however place smaller universities such as Brock or Lakehead or Trent in a position of having to compete even more so with the larger and long-established universities and could this in the long run perhaps not be beneficial to Brock University?

Mrs McMillan: It depends on its setup, doesn't it? Because if Brock gets to keep everything that's given to Brock, then it's an extra. If anything is taken away because of what's given to Brock, then it's a detriment. I don't think that's the intention. I would hope that anything that Brock could raise through this means would be of help to Brock and not in any way a detriment.

Mr Bradley: I'll make an observation for you in this last period of time: Those of us who've been involved by various levels of government would like to share your optimism about whether governments will in fact reduce the allocation to universities by the amount that foundations raise funds. I urge the foundation to be very vigilant of that and to inform all of the local members of the Legislature if indeed you perceive that government grants appear to be going down at approximately the same amount of money that you are raising.

Mrs McMillan: Thanks for the warning. I know that Terry Varcoe, who is the vice-president in charge of administration at Brock, is one of the very best in Ontario and I'm sure he'll keep a close eye on it.

Mr Bradley: I say that generically as opposed to any particular partisan box.

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Mrs Witmer: I certainly do support the formation of these foundations. I have two universities in my own community: Wilfrid Laurier University and the University of Waterloo. They're most optimistic that they will be able to raise additional resources and be able put those towards educating the young people in this province. Hopefully, things will not materialize as Mr Bradley has indicated.

However, if we're going to have the maximum effectiveness from the foundations, and that obviously is to make money so that the universities can function more effectively and do some of the research and some of the teaching and build some of the buildings that need to happen, what would you be recommending? How can these foundations maximize their effectiveness in the early years? What do they need to focus on?

Mrs McMillan: I suppose they need to get out to the community. Each member of the foundation would have certain acquaintances who could be a starting point. The university has committees of speakers who go to various functions and talk about the needs of the university. I think publicity is probably the main avenue to start with. If you have any suggestions as to how the foundation should function and go about it, I'm sure the foundation would be very happy to hear you.

Mrs Witmer: Obviously, that's going to be the content of some of the first meetings that the foundations across the province will have as to how can they maximize their effectiveness, how they can communicate in order to encourage people to give money to the universities.

Just on a personal note, why do you personally believe that you were selected to sit on the foundation board?

Mrs McMillan: I'm not sure. I was chairman of the board at Brock for four years and had been chairman of the Niagara South board and a long-time member. I suppose it's my interest in education.

Mrs Witmer: Thank you. We wish you well.

Mr Jackson: I'm not sure that the foundation as it applies to the university prohibits the foundation from utilizing funds for ongoing operational costs of a university, which differentiates itself from a hospital foundation, which specifically limits to program expansion and/or capital works but not operational dollars. Is that your understanding?

Mrs McMillan: Yes. As far as I know, the university would be free to use the money. I have to be honest and confess to you that I know very little about this. We had a communication from Grant Dobson saying that Brock wanted to set up a crown foundation and that the main point was that it was to be separate from Brock University, and anything beyond that is just guesswork on my part, because I don't really know.

Mr Jackson: In your experience with school boards, you differentiated from funds which were created for future capital needs. They were protected and preserved by virtue of governments changing their opinion on how capital should be treated and how well it should be funded.

I want you to share with the committee, if you can, your views on whether or not this fund should be a long-term goal to help enhance the university's breadth of program development for expansion of both capital and program, or do you see it fulfilling a rather more immediate need of assisting with ongoing operational? This is the major tension between foundations tied to immediate tax relief to gain cash for operational costs.

Mrs McMillan: I see what you're getting at. All right. I don't think that the foundation should be necessary for supporting ongoing costs.

Mr Jackson: Operational costs.

Mrs McMillan: Operational costs; that's right. I think the university should be sufficiently funded and be able to raise enough money through other means that operational costs would not have to be met through a crown foundation.

Ms Harrington: Welcome. Thank you for coming all the way up on such a cold day.

You certainly do face a challenge to get this thing going and start attracting donations. In looking at the broader picture—other questioners have mentioned it and also you in your answers—a partnership with individuals and businesses in the community and across the region is something that I think individuals and businesses want, to be part of the university. That this is a natural community growing period. Hopefully, it will work out well.

I had two questions. I think both of them may have been touched on. The first one asked the criteria that you would use as a foundation for the allocation of the funds that you raise. I think you said you don't know yet.

Mrs McMillan: I think it would be a matter of listening to all the opinions or all the suggestions that you could amass and then making up your mind as to what was the best thing to do.

Ms Harrington: Certainly a lot of that would have to do with what the donors wanted to happen with their money, I would imagine.

Mrs McMillan: Yes, and that's another thing that I wondered about with a crown foundation. Are the donors allowed to specify what they would like the money to go for? If they are, then of course their wishes have to be honoured.

Ms Harrington: That will be an interesting process you'll be involved in, looking at the criteria.

The other question was about the size or type of staff you might have. Do you know whether you will be hiring someone?

Mrs McMillan: No. As I say, no one has talked to me about it. I don't know what Brock has in mind to do about the crown foundation. As far as I know, it would be run through Grant Dobson and his office, which is presently in existence. I haven't heard anything mentioned about hiring anybody.

Ms Harrington: We're in the process of evolving and maybe universities will each have a little different way of setting up a foundation.

Mrs McMillan: Are all the universities in the process of setting up a foundation?

Ms Harrington: I believe it's their option now whether they want to pursue this. I think most of them would be making use of this new opportunity.

The other thing I could ask you is a bit about your background. I know for many years you were the chair of the Niagara South Board of Education. I guess the community involvement is the important one now that you're going to be going after the community right across the Niagara region. What connections do you have with the rest of the Niagara region? Your name is known, I think.

Mrs McMillan: I was going to say probably through my husband mainly, because he was mayor of Thorold for 13 years and a member of regional council, and our son, who was a Liberal candidate in the past provincial election, and various charitable organizations that I belong to: the hospital auxiliary, the cancer society, the

YMCA, that sort of thing. There's nothing specific, I guess, for me personally outside the field of education. I'm probably best known through being chairman of the Brock University board, because that was reported far more often in the Standard than anything to do with Niagara South, since Thorold seems to be on the fringe.

Mr Bradley: Or any of the provincial members.

Ms Harrington: Those contacts will be very helpful for you. You're probably as well known as your husband.

Who do you think should sit on the foundation? Whom would you go after?

Mrs McMillan: I was given a list of the people who have been suggested. Any of them would be excellent. The people at Brock must have suggested those people for a particular reason. I think any of them would be very good members.

Ms Harrington: I think it's key that you make sure there are folks there from all different sectors and parts of the region.

Mrs McMillan: Well, that has been done.

Mr Waters: Do you feel that the gifts could compromise the integrity of the university and do you believe that the foundation should have the right to reject a gift? Let's say somebody wanted to donate to Brock and it wasn't in line with where Brock was heading. If they had designated a gift for XYZ and Brock was going ABC, how do you feel Brock should proceed with something like that?

Mrs McMillan: I don't really think that would be a big problem, because I think anybody who wants to donate a sizeable amount to Brock is going to have the best interests of Brock at heart and will listen to what the people connected with Brock think is most necessary. If anybody has some kind of pet project that doesn't coincide with the direction that Brock would intend to go in, I think that person would be most unlikely to give a large amount. I don't believe that sort of problem would arise and that it would be impossible. I think it would be quite possible to talk to a person and say: "This is not consistent with Brock's aims at the present time. Would you consider using the money for something else?"

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Mr Waters: These foundations are relatively new in Ontario, but other provinces have them. As we go through the process, do you think we should expand this? Do you think it's a good thing for libraries, museums, art galleries?

Mrs McMillan: I'd say you should see how it works for the universities and then decide.

Mr Waters: Do you think it should be expanded or it should be basically left at the university level for a number of years to see how it's going to work out? Also, if there is that type of money sitting out there, or gifts sitting out there, should it be funnelled into education rather than to libraries and the museums or do you think they're equally important?

Mrs McMillan: With my background in education, naturally I would prefer education. It's unfair to ask me that.

The Vice-Chair: Mr Frankford, did you have a question? You have time for a question.

Mr Frankford: I must confess, I don't know about Brock in great detail.

Mr Bradley: Just send money.

Mr Jackson: He was a great general.

Mr Frankford: With your involvement there, did you have any thoughts about which part of the university you would like to direct funds to, any specific programs or faculties?

Mrs McMillan: We have a new business program which is very popular and has been well funded through donations. Taro Corp has been very generous to Brock.

Anyway, there are a number of areas at the university which could always use more money. I think the university has a five-year plan, where it develops certain aspects of the function of the university on a regular basis. The people who are concerned with that would certainly talk to prospective donors and tell them where the need is greatest at the present time.

Mr Frankford: So if you haven't been lobbied already, you would anticipate being lobbied by particular faculties to direct foundation funds to them?

Mrs McMillan: Possibly. I think that happens in any organization. You just have to listen and make up your own mind as to what's best.

The Vice-Chair: Thank you very much for appearing before the committee today. I wish you well.

WILHELMINA NOLAN

Review of intended appointment, selected by the third party: Wilhelmina A. Nolan, intended appointee as member, Custody Review Board.

The Vice-Chair: We have next on our agenda today the review of the Custody Review Board, Wilhelmina Nolan. We'll give you the opportunity, if you would like, to make an opening statement or comments. If not, we will proceed with the questions.

Ms Wilhelmina Nolan: I have no comments.

The Vice-Chair: Proceed with the questions. It's a third-party review.

Mr Jackson: Welcome and thank you for coming forward today, not only for the position, but before the committee.

I've had a chance to look at your background, which in my view is very helpful to the position in terms of understanding the needs of the children who are before the Custody Review Board, and so I'd like to ask you a couple of questions. Although you don't have the power to reform the Young Offenders Act, there is specifically some latitude contained within the notion of placing some children in varying forms of custody. It has been said that one of the problems with the Young Offenders Act is that it lumps all children together. We've got murderers in with young girls who are runners. We have 21-year-olds in young offenders' facilities by virtue of the length of time it takes for the court process and who then do their three years. They can still be, when they're 21 years of age, in the same cottage in a schedule 1 facility, for example, with a 13-year-old girl who's a runner.

The other big problem is that the child has the absolute right to deny any program intervention for assistance.

Those are the two areas that concern me most. I think a board can sensitively place an individual, but there is some flexibility in ensuring that certain program access is available to some young offenders so that they don't become more hardened young offenders.

Could you comment about either your understanding of kids who might be clients or your opinions, which they would be at this point, I guess, about access to those kinds of placement/access to program which can be helpful as opposed to just lumping the general population and hoping that a child survives that, no matter how long they're being held in custody? I thought I'd start off with a real light question early. Is that okay?

Ms Nolan: Well, I'm a mother of two children. What I noticed a lot about being a mother is that children need guidance. Certainly if there are opportunities to just give them opportunities to make their situations different, to get away from whatever has brought them to custodial facilities in the first place, those should be presented to them. Certainly it must be fair that they have the right to refuse such intervention, but I do believe in that horse to water theory, that they certainly should be presented with opportunities. It does somehow seem disturbing that a 13-year-old runner, as you say, might be placed in the same facility as a more hardened criminal. I would think that kind of situation should be looked into, if an opinion is to be made that those kinds of things should be taken into consideration.

Mr Jackson: I noticed you have some experience with shelters? Certainly in your experience there you would have seen children who were also involved in sort of a placement at a shelter along with the mother who's had to flee a violent situation. Have you had an opportunity to visit any of the other custodial facilities, any of the three levels of facilities that this Custody Review Board will be referring young offenders to?

Ms Nolan: Actually while I was hired by the Metropolitan Toronto Association for Community Living, I needed to visit Metropolitan Toronto West Detention Centre and/or work with developmentally handicapped youth who had been held in custody for one reason or another and work with people involved in the criminal justice system on behalf of those people. As well, inside the shelter there were some youths who would be involved, from time to time, with criminal authorities.

Mr Jackson: Do you have any opinions about the incarceration of those youths who have contracted HIV? As a review board member, would you have opinions about the appropriate placement and/or issues of exposure to the staff with respect to—I mean, let's face it: We are dealing with, unfortunately, young girls who have resorted as street youths to prostitution, been forced into it for various reasons, and we have incidents of known carriers in that cohort in custody. Do you have any opinions about this area? Because we don't seem to be getting much direction or opinion coming from those persons in authority. Do you have any opinions about that?

Ms Nolan: I remember reading over the years about

the transmission of HIV throughout custodial facilities. HIV's a very scary thing for me. I should think it would be important to prevent the further transmission of the disease. I don't know the regulations currently around that, but I should think we would want to protect as many people from contracting that virus as possible.

1130

Mr Jackson: I would think you'd carry that forward as a concern because we integrate the populations under the Young Offenders Act and they're not maintained under lock and key, and that's understandable. In many respects, they're children and there are fire considerations etc.

However, there is more of an isolation with the adult population and the incidences of contraction are a little different than the methodology of contraction for the youth population. If I could leave that with you, I would feel more comforted that there was someone who was equally concerned about it. I've seen some statistics which indicate a dramatic rise in the young offender population. I believe it's a legitimate question for a member of the board to which you, I believe, will make a fine contributing member.

Ms Harrington: I wanted to find out a bit more about what you will be doing in this role. Is it actually working with the youth?

Ms Nolan: Yes, I understand that I would be a person who would go into a custodial facility and make an assessment around a placement of a youth.

Ms Harrington: Do you feel comfortable being able to do that, talking very personally about how their life is and where they're going?

Ms Nolan: Yes, I feel extremely comfortable. Actually, I think I'm probably the kind of person a youth would be able to relate to.

Ms Harrington: That's very important.

Ms Nolan: I understand a lot personally about the way that youth may end up involved with the correctional system, things that might have gone on in their families throughout their life history that might have brought them before the criminal justice system. My work also in the community and shelters and various community groups that I've served has given me a really clear idea of the varying kinds of situations that bring people, not only youth but all people, to the criminal justice system and the kinds of issues they've had to face.

Ms Harrington: I guess the key is somehow getting individuals to empower themselves to make the choices in their life and realize that they do have that power.

Ms Nolan: I agree 100%. I don't think many youth actually realize that they can empower themselves to change and to make the most of themselves and become productive. I had some doubts about that myself while I was a teenager. I came from a very poor family, lived near Regent Park and was presented with many opportunities to move over to the other side of the tracks. Somehow opportunities were presented to me. I feel very fortunate that I've been able to none the less become productive and to give something back, to turn my life around and like what I see in the morning. I hope to

present that to youth as well.

Ms Harrington: So you feel that for young people at this age there is a good chance—I don't know whether it's 50-50 or what—that they do change?

Ms Nolan: Yes, certainly, depending on an individual situation. I've seen youths who perhaps have less chance than others of turning around. You would want to look at each one individually, but certainly those who would present themselves as having the motivation and the capability of moving forward and becoming productive should have that opportunity.

Ms Harrington: I have one last question on the number of people who do this job. I wasn't sure how many were actually on the review board, but would there be enough to service all the youth who need this service?

Ms Nolan: I understand that the numbers have increased significantly over the last couple of years. Perhaps some of that has to do with a program to educate youth as to their rights to the review process. Certainly the number should be adequate to fulfil the function of the board.

Mr Waters: In the background material that we received, we find that the role of the board is that you can go in and talk things over with the director, but really you don't have any power to overrule any decisions made by that person. I was wondering if you felt that the role of the board is adequate if indeed you can't effect any change, because it says here, according to the board, almost 95% agree with the decision of the provincial director. If you can't change that person's mind, I guess you might as well agree. I just wonder if you feel that the board has enough power to really go in and look at, from your perspective, the needs of these young people in turning their situation around for them.

Ms Nolan: Ninety-five per cent is a pretty high percentage of assent to the board recommendations.

Mr Waters: This is what we have in our research material, so that's what I have to go by.

Ms Nolan: Yes, I've gleaned this over the last week. If that figure is correct and the board is well chosen, as you seem to have a very careful review process, I don't see it as problematic. What about the other 5%? I don't understand the situations that have been involved there, but the 95% seems to be okay, it seems to be fair enough. I don't think the board needs to have power as such. Its function is to make recommendations, isn't it?

Mr Waters: One of the other stats that they threw at us is that the number of 15- and 16-year-old youths who have been held in the last five years has increased from 311 a day to 1,000 a day. Those stats are rather frightening. Following on what Mr Jackson said, I think we really have to start looking at how we intervene and how we deal with these youths before they get to here or, when they get to here, to make sure that they're not back again next year, or the year after, or three years after, whenever they get out, that they're not out for three months and back in. I was wondering if you had any ideas of how we can intervene in such a way to a better extent, I guess, so that we intervene in these young peoples' lives in a positive way so that they're not back.

Ms Nolan: I find the number disturbing as well, the increase in the number of youths being detained, being held in custody by police. I wonder what's contributing to it as well. I have some ideas about glamorization of crime and just generally what is leading to youths feeling that it's appropriate to break laws, appropriate to stray from the good side of society.

We were talking a little earlier about empowering youth to actually speak and to be heard. Is there a way to motivate them to become more productive, to not want to buck the system, to not want to involve themselves with the criminal justice system? Do they really understand what that means? If they do, perhaps that would be a deterrent. I can't see that youth, most youth anyway, knowing the kind of life that criminals are involved in or people who are held in custodial facilities for most of their lives are involved in, would want to willingly go and involve themselves in that kind of system. Perhaps we could look at those kinds of deterrents and more appropriate guidance for these children.

Mr Waters: The one part you said that I really like is empowering. I guess somehow we have to hear them to hear what they're saying, and I'm not so sure that we as the adult community always really hear what our young people are saying to us, and then from that point try to work something through, because these figures just can't keep going on. We see more in the large cities. We're starting to see more and more youth gangs, neighbourhood gangs or street gangs. In small towns, where you don't have so much of the gang mentality, what you're seeing is the vandalism. They seem like a troubled and frustrated group of people in general.

Ms Nolan: And why is that?

Mr Waters: I wish you well in your endeavours. I just hope that somehow, somewhere out there we come up with a way of listening and hearing and dealing with the problems of our young people.

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The Vice-Chair: Mr Frankford, you have a minute.

Mr Frankford: I wonder if I can get clarification from the researcher of this statement about the number of youths held by Ontario police as tripled from 311 to 1,000 a day. Does this mean this is the number who are taken into custody day after day or is it the number who are held, who may be held for several days. Does it reflect turnover?

Mr Lewis Yeager: I'll get that information for you for this afternoon.

Mr Curling: Thank you for coming before the committee, Ms Nolan. I think it's a very responsible position that you will be undertaking. If anyone knows that, I'm sure you know that. Let me just follow up on what Mr Frankford was saying here. There seems to be a contradiction somehow. They said there is not an increase in youth crime. This is the note they gave me here. In the meantime, on the next page it talks about how the number of 15- and 16-year-olds held by the Ontario police has tripled in the last five years—I know we can play statistics—from 311 a day to more than 1,000 a day.

Statistics of course will show that there's no increase in youth crime, but the fact is that in perception outside in the community it is felt that youth has gone just rampant in vandalism and crime and all that, even if it is not true, that there is an increase. The perception is there, and dealing with that perception made it more and more difficult. When they do come before the board, where do they go? Do they go in an institution like Metro East Detention or do they go into a home? That's a decision you can review and make. I've got to make some comments, because I want you to respond afterwards.

I hear you saying "empowerment" and I'm worried about that kind of empowerment because I feel that the young people in the school are much more empowered now. They know their rights in the sense that many of them understand the legal system itself when they are pulled over by police and what have you.

I'm not saying that they shouldn't know it, but I think they are not less of knowledge now than before, so they are quite empowered. The young kids are calling 911, are calling the cops on their parents if they're trying to restrain them or do anything. Now, having to deal with that, I wonder if we are going in the right direction. You will be seeing more coming to you. You will be making more decisions of where they go and what they should be doing. People talk about the Young Offenders Act a lot. Do you think the judges are not making decisions regarding some of these young offenders—I don't want to call them young offenders; these 16-year-olds—who have done adult crime, not perceiving them as adults because they feel there's a weakness in the federal law and the provincial law?

If you don't understand, I could explain it a bit more, if you want.

Ms Nolan: If you would.

Mr Curling: The fact is that with some crimes that are committed the judge can make a decision whether or not a crime done by the 16-year-old is an adult crime and then you regard this person as an adult. Much of that is not being done, they say. The complaint we have been hearing is that the judges feel that if the law was clear they wouldn't have to be making those decisions there. Therefore, many of those young offenders doing adult crimes are dealt with as young offenders, and they feel they can get away with it because the punishment is less severe. Do you feel that there should be some adjustment to that?

Ms Nolan: I like to feel safe in my home. When you say "adult crime," is that extortion or is it murder? How does that affect our society? How does that affect my children and myself in our home in the evening? I'm not a legislator and I don't have knowledge of the acts, inside and out, the federal and provincial acts. I'm concerned around basically safety and I'm concerned for youths. Yes, if a child is a menace to society, where there will be violent crimes, murders and these sorts of things that are very, very dangerous to all of us, we should take action to make sure we're all safe.

When I was speaking about empowerment, referring back to that, perhaps besides knowing their rights under the legal system and what they can get away with, they

could understand opportunities to not involve themselves with these kinds of systems. I really want to be clear about that. I think empowerment is both ways. Yes, you have a right not to be abused by your parents or whatever and, yes, you have a right to a fulfilled and happy life.

Back to your question around the legislation, I really think we should try to make sure that we're safe, that both the child and the rest of us are safe. If a judge is unclear, perhaps he would consider the rest of society and where he is releasing a child.

Mr Curling: I see. I just want to clarify that too. If two 14-year-olds stick up a bank, if a crime was committed, in one regard one would say they must be adults. People are in shock when they hear it's a 14-year-old or a 12-year-old. They say that he or she should be in bed, that kind of response from the community, or that individual should be studying, doing the things that people at that age would have been busy doing, becoming an adult. Therefore, too much of that is being done.

I'm sure you've visited Metro East Detention. Many of them feel actually—not many—when I've talked to them, that they have six months, three months, "It's not on my record," and they seem to be empowered by that knowledge.

The fact is too that I fully agree with you that all these rights should be taught in the school, to say these are the rights of the citizen and when you're being held by the police or what have you, you have those kinds of stuff. But I speak for the community outside which says: "We don't seem to be protected. We want a safe environment and that is not being done." More and more of that will come before you, I would say.

Where do we put this individual? We don't gain anything by putting them into Metro East or any confined area. Are there, in your view, any changes that will come about? There are nice terms that they use. Mr Jackson knows all those terms anyhow. Not confined custody. What is it now? Open custody. They seem to be going more for that. Do you see any changes in those sorts of things? You've been making those decisions and reviewing those decisions—"No, not open custody; confined custody."

Ms Nolan: Well, yes, I've seen a move generally throughout most social services to integrate as many people as possible into mainstream society. Again, I need to consider it. I really believe that we need to be safe and the youth need to be safe. You need to weigh each case individually. If I really believe there's a chance that someone is going to be injured, if there are weapons and significant danger involved, then I would be reluctant to suggest that someone like that should be outside on the streets with the opportunity to repeat that sort of offence.

Mr Bradley: Does not the existence of this board in itself suggest to young people who are offenders in this case, who I presume have been convicted and going to be placed somewhere, that one more time they have the ability to manipulate the legal system to their own end?

Ms Nolan: I'm certain that there will be a number of people who would ask for appeals or reviews through this board, who would want to manipulate the system in order

that they may free themselves, have the opportunity to repeat crimes, get away with something. I'm certain there will be that element. There will also be other elements, perhaps people whose circumstances were not fully understood. Each situation would need to be weighed individually. Throughout the shelter system, for example, I met many, many people who looked to manipulate the system for their own benefit, and often to the detriment of others. There were others who sincerely wanted to re-establish themselves in a peaceful life. People are all very different. They need to be looked at individually.

The Vice-Chair: Thank you for appearing before the committee today. I wish you well.

I would ask the subcommittee to remain. We want a short subcommittee meeting. I'll adjourn the committee until 2 o'clock.

The committee recessed from 1150 to 1407.

KENNETH LAING

Review of intended appointment, selected by the government party: Kenneth Laing, intended appointee as member, Pesticides Advisory Committee.

The Vice-Chair: I see a quorum, if we can call the government agencies committee to order. Kenneth Laing is our intended appointee to the Pesticides Advisory Committee. If you have some opening remarks or comments you would like to make, fine; if not, we can go directly into questions. The pleasure is yours.

Mr Kenneth Laing: We can go directly into questions.

Mr Waters: Good afternoon and welcome to the committee. I wouldn't be nervous, by the way, coming to this committee. We're usually friendly. We don't bite too hard. I found interesting, when I was reading some of the background, that you're an organic farmer. "Organic" doesn't mean necessarily 100% organic; the odd time you end up having to use pesticides.

Mr Laing: I guess that depends on how you define "organic." I operate under the Organic Crop Improvement Association rules. They set up the rules; they send out an inspector once a year to inspect my farm. There's perhaps a handful of chemical pesticides in their regulations that I would be allowed to use now. They are different in that a lot of them are botanicals, which means they come from a natural source. For instance, rotenone is derived from a natural source. There are breakdown pathways in nature to reduce that chemical back to its natural constituents as opposed to a chemical that's been created by man. There may be no natural pathway to break that chemical back down in nature.

Mr Waters: Has this been the type of farming you've done solely? Or were you a farmer who was farming in, shall we say, the modern way and then converted to this?

Mr Laing: I was a conventional farmer. I've been farming for 14 years. Only in 1989 did we switch to doing things organically.

Mr Waters: Out of curiosity more than anything, because I don't know whether it's actually part of the reason you're here, did you notice a big difference in your yields when you switched? Have you been able to pretty well maintain a living, shall we say?

Mr Laing: Yes, we've maintained a living. In fact, it sort of varies from one crop to another. Some crops have improved, some have stayed about the same and others are difficult. You have to change your management and you may have to overcome your pest problems and production problems by design rather than a quick-fix chemical. Chemicals are the last resort on an organic farm, but there are a zillion other methods you can use. Some of them are as old as crop rotation. Some of them are as new and as high-tech as pheromone disruption.

Mr Waters: Do you see conventional farmers gradually getting away from the man-made chemicals and pesticides and starting to look at alternatives? Or do you see an increase in general?

Mr Laing: I see most of the farmers, particularly in fruit growing, which is our major source of income, moving away from chemicals. They're getting into integrated pest management where, instead of going out and spraying every seven days just because the book says so, they'll hire a scout to see whether there's a pest out there before they spray, or they look themselves.

Mr Waters: It amazes me that in our country we say to a farmer, "You cannot put this on. We won't allow this chemical into Canada to be put on our crops," and yet we have tolerance levels on food and produce and different things that come into the country that are grown elsewhere. I was wondering if you could comment, whether you feel if we ban it for us, we should ban the import of it, or is it just something that we have to tolerate because we're in a world market.

Mr Laing: You know, to be fair, I think if our farmers can't use it, I don't think we should allow it in. I think there is a big difference in the way chemicals can be used around the world. What you might spray for weeds in Central America or South America may not behave exactly the way it does in Ontario, so there may have to be a difference in registration between those two places, just because the climate and the soil are different in those two areas of the world and maybe they break down differently. Maybe down there the residues disappear very quickly, whereas they might disappear slowly here.

Mr Rosario Marchese (Fort York): Part of the problem, I suspect—you might correct me if I'm wrong—with organic growing of fruits and vegetables is that they don't of course turn out as perfect as when you spray them. Part of the problem is that if that is so, and because we've been chemicalized for so many years and only appreciate the way the apple looks in its perfect form and if it's organically grown, it will look rather different and it may not be that pleasant, so people may not buy it. Is that a problem?

Mr Laing: It's a problem for poor organic farmers. I think we don't really need to lower our standards. There may be a few cases where it would make life easier, but of the strawberries and raspberries I grow you probably couldn't tell the difference to look at them. I don't think we should lower our standards very much.

Mr Marchese: If you have an apple that's organically grown, would it look the same if you spray it?

Mr Laing: Yes, a well-grown organic apple looks pretty much like a chemically grown apple. I'm still a farmer. I've got to control the pests. I've just got to use different methods. You've still got to control them.

Ms Harrington: Following a bit along that line about what I call a cosmetic use of pesticides for spraying, say, schoolyards and parks in order just to make them look more perfect, what would be your position on that? I know some municipalities are now trying to get away from spraying. Do you have a position on that?

Mr Laing: I discourage cosmetic spraying. I think there are alternatives. Maybe you're going to have to change people's perception of what looks pretty, but if you're trying to grow all grass and it ends up having dandelions in it and you have to spray to get rid of the dandelions, maybe you should look at growing something else than just all grass. Maybe you should mix some clover in there or take a different approach.

Ms Harrington: Do you feel the province should get into legislation around this issue, or do you think it's up to the municipalities?

Mr Laing: We might need some legislation, I believe. I live in a county where the township sprays and the county doesn't, so you have one road where the roadsides are sprayed and yet my township road is sprayed. It's sort of a curious thing.

Ms Harrington: It's a lovely area down there near St Thomas. I once stayed in a guest house which was a farmhouse near Port Stanley. It was very nice, surrounded by an apple orchard.

Mr Cleary: Welcome to the committee, Mr Laing. I'm just looking through some of the material before me. You operate a 70-acre farm and you have strawberries, raspberries, Christmas trees and cereal grains. I take it you are making your money out of strawberries and raspberries.

Mr Laing: They all make money. It goes together to make a living. You're asking me why I might be able to make money growing cereal grains. I guess part of it has to do with reduced costs and better returns.

Mr Cleary: Yes, but I'm looking at your acreage.

Mr Laing: True, it's the intensity of the strawberries and raspberries that will let me make a living on 70 acres.

Mr Cleary: How many acres of each do you have?

Mr Laing: We grow about two and a half acres of strawberries, about two and a half acres of raspberries and five acres of Christmas trees.

Mr Cleary: Being you're an organic farmer, how does your price for raspberries and strawberries compare to others that may produce them a different way?

Mr Laing: We start out at about the same price at the beginning of the season with strawberries and by the end of the season I'm getting the same price and the other growers are getting half as much.

Mr Cleary: What do you think your main goal would be on this advisory board?

Mr Laing: I bring a farmer's point of view. I've got pests to control. Chemicals may be my last resort, but I

also have some expertise in setting up an alternative system, a way of farming with fewer chemicals. Part of the mandate of this committee is to reduce pesticide usage through its granting grants for research. They don't just classify pesticides.

Mr Cleary: Getting back to some of my colleagues' remarks on the other side, we have different outbreaks of different types of weeds, if you want to call them that. The one weed that's invaded a lot of Ontario right now—and I don't know whether it spreads on to your farm land or not—in a number of ways, whether in the springtime, is the purple loosestrife. I understand that in a lot of ways that's going to be controlled by a beetle or a bug. I'm sure that in other parts of Ontario chemicals get involved in it too. Do you have any comments on that?

Mr Laing: There are lots of ways to control weeds. I guess you have to understand what the weed's telling you when it appears. If I can give you an example of weed control on my farm, twitch grass is a big problem. It's a big problem for lots of farmers. I thought, when I switched to organic farming methods, that I'd be overrun by quack grass, but I wasn't and I'm not really afraid that I'm ever going to be. It's just that you can solve some of those weed problems by management.

When you till the soil, what crops you grow have a big influence on weeds. The state of your soil and how healthy it is, the structure of it, the organic matter, all have an influence on what sort of weeds you have out there. If you compact your soil, you're going to have weeds that are out there to solve soil compaction. There are certain weeds that'll show up when soil gets compacted.

There are a lot of different techniques to control weeds. We grow a green manure crop before we plant out strawberries and raspberries. Those two crops are very difficult to control weeds in once they're established. You've got to control them before those crops go in or you're in a real mess.

Mr Cleary: Do you feel that you will have any problem representing the organic farmers and the other side of the coin, which is the agricultural community that uses the pesticides, representing them all?

Mr Laing: I've been both. I think I can understand the problems of all farmers. It's not easy to develop alternatives and sometimes you do need to use chemicals.

Mr Cleary: How do your yields per acre compare to possibly the agricultural people around you who use the pesticides?

Mr Laing: My strawberry yields are well above the provincial average. They're not quite as good as when I was a conventional grower, but they're close, and we'll probably get them up there.

Mr Cleary: Okay, but in your cash crop, as I think you said in here, how do your yields compare?

Mr Laing: They're slightly lower than probably my county average. It depends on the year. Sometimes they're probably equal to it, but I get a better price for those crops.

Mr Cleary: What are the cereals that you grow?

Mr Laing: Winter wheat and spelt, which is sort of a specialty grain much like wheat.

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Mr Cleary: So your yields almost compare to the provincial average.

Mr Bradley: Are you the only farmer's rep on the committee now? The farmers always felt they were underrepresented on the committee for the last 10 years at least, or maybe eight years. Are you the only representative who is a full-time farmer?

Mr Laing: No, I believe Don Lobb has just been appointed to this committee as well.

Mr Bradley: There are two now, so the farming community will be happy, will it?

Mr Laing: Should be.

Mr Bradley: That remains to be seen. That's just a point of interest to me. There's a problem that arises with federal and provincial regulations and who has pre-eminence. How do you think this problem can be solved where there are different federal regulations and different provincial regulations?

Mr Laing: I think it's important that things be fair, that farmers in both provinces are subject to the same regulations. But it's sort of the same story on the international scene. A chemical you apply in northern Alberta may not disappear as quickly as one we might spray in southern Ontario, and that's a difference in climate, a difference in soils. The soil pH can make quite a difference. Some areas have acid soils; some are high in calcium.

Mr Bradley: Do you have a view on cosmetic spraying, that being of course spraying so that the lawns will look nice and the trees will look nice and so on? There's a great argument out there concerning that matter, how cosmetic spraying, some will say, is not necessary; others will say that if you want to beautify, then you must have cosmetic spraying.

Virtually every director of parks and recreation, up to a few years ago, would send me a letter saying, "I support exactly what you're doing; I'm really for the environment." I always look for the word "but" somewhere in there. In the third paragraph the "but" would come in, "But you're going to cost me \$50,000 more this year because of some bizarre rules that you're bringing in," and they're usually bizarre rules related to cosmetic spraying. I'll leave the question pretty open-ended: Do you have a view on cosmetic spraying for cosmetic purposes?

Mr Laing: Yes, I think we should discourage it.

Mr Bradley: Prohibit it or only discourage it through education?

Mr Laing: Develop alternatives, educate people. I think you can educate the public to have a different concept of beauty and neat and tidy, I guess. It may depend on what you plant. We don't all have to plant grass and it all doesn't have to be a half-inch high. There can be some variety.

Mr Bradley: You must find it a dilemma as a farmer, knowing that there are people living in urban areas using

great amounts of pesticides on their lawns to make them look nice while they are telling farmers that they can't use pesticides, or shouldn't, because it might poison the apple they're going to eat. You must find that discouraging from time to time.

Mr Laing: Yes.

Mr Allan K. McLean (Simcoe East): I wanted the opportunity to ask a few questions. I'm pleased to see you here today and I'm pleased to see your appointment being made, because I think it's going to bring another perspective to that advisory committee. I'm one of those farmers who never used insecticides when I was farming, and there are other methods. When I go to the market on the weekend, I go and buy my produce from the organic farmer, because I do know the difference.

In the Holland Marsh our celery is grown to the tune of 100 pounds of fertilizer per acre, our carrots are approximately 700 pounds of fertilizer to the acre and our onions are about 500 pounds of fertilizer to the acre. It worries me because I think people are buying those carrots and onions and food weekly and it's a detriment to their health. What would your opinion be on that issue of the fertilizer? I know you're a farmer, so you know as much about fertilizer as I do.

Mr Laing: I think you can develop alternatives. I don't use any chemical fertilizer on my farm and I get reasonable yields, but you have to look at a specific crop, understand what it needs and find some other way to supply it. It's not always easy, but if you're committed, you can tackle them one at a time and solve them.

Mr McLean: We have a problem on Lake Simcoe. Mr Bradley would be well aware of the phosphorus level that lake has; it's up to 105. We got it down to about 85 at one time. But until they stop the runoff coming out of the Holland Marsh into Lake Simcoe—and I blame it on the fertilizer that's there—they will never solve the problem on Lake Simcoe. We don't hear the consultants and the professional people addressing that issue as a problem. Do you not believe that is a major problem? Are you aware of the situation at all?

Mr Laing: Oh, I'm aware of it. I guess I'm one of those people who believes that agriculture should be spread out more. You shouldn't have concentrated production units in one area. A marsh is a good example of overconcentration. You can grow carrots elsewhere in Ontario. It's not going to be maybe as easy, but maybe we should get away from that concentration. It's just like having a lot of livestock in one unit. You're just going to have environmental problems no matter what you do if you concentrate enough animals in one small area.

Mr McLean: I'm a believer that the produce we're producing in the high-volume fertilized acreage is a cause of a lot of cancer that we have today. It's hard to say that but the amount of potash and phosphorus that's going into those vegetables—and we're eating them—I just happen to believe is wrong. But nobody is addressing that very issue that I see. I had a tour of the marsh last year, and they didn't want to talk about the amounts of fertilizer and the tonnage that's going into growing that very food. On top of that there are the insecticides they're using for their onions and to kill the leaves on their

potato plants. I'm glad to see you on the committee because I think you'll add another perspective to it that a lot of people don't recognize.

The other issue that I see you're faced with is the larger companies, farmers. The little farmer is kind of getting pushed out and now we've got the big ones coming in that are going to be more in the line of using more insecticides. What is your opinion on that?

Mr Laing: It seems that when those big companies come in, it always makes room for smaller people. Partly for some of the reasons you've mentioned, big companies don't always do a good job. It's difficult for them to do a good job in terms of quality, so it makes room for small people like me who can produce high quality.

Mr McLean: Did you ask to be appointed to this committee or was your name recommended by anybody? How come you're being appointed?

Mr Laing: I didn't ask to be on the committee.

Mr McLean: Who did ask you?

Mr Laing: Linda Pim.

Mr McLean: That's good. After you were asked, what did you think you could do to make it a little different?

Mr Laing: I guess my expertise is in alternatives, so somehow maybe I can see the levels of pesticides in Ontario reduced. I think there's a lot of pressure on farmers to reduce pesticide usage; part of it's environmental, part of it's economic. One of the great advantages of organic farming is to reduce your input costs. Fertilizer and chemicals cost a pile of money, and you don't have a whole lot of control over those inputs. I mean, you buy chemicals from transnational companies.

Mr McLean: But on the pesticides committee, are you going to be dealing with the other aspect of the fertilization of the land as well or just on the pesticides that are going to go on the top?

Mr Laing: It's just restricted to pesticides.

Mr McLean: Will you be talking about the other aspect that I raised with regard to the amount of fertilizer that is being used?

Mr Laing: If it fits in.

Mr McLean: I'm glad to see your appointment. I wish you well.

The Acting Chair (Mrs Elizabeth Witmer): Thank you very much, Mr Laing, and I wish you well.

1430

JOANNE WEIGEN

Review of intended appointment, selected by the official opposition: Joanne Weigen, intended appointee as member, Ontario Special Education (English) Tribunal.

The Vice-Chair: Our next witness is an intended appointment to the Ontario Special Education (English) Tribunal. It's a half-hour review. You have the opportunity to make some opening comments, if you so wish, or an opening statement. If not, we will proceed with questions. What's your wish?

Mrs Joanne Weigen: Oh, you can proceed with the questioning.

Mr Bradley: I've watched in education, having been involved directly in it a number of years ago, the pendulum swing from integration to segregation. It's a pronounced swing now to integration, of course. I guess it initially started out as integration and then people decided that segregation was best for the student, and now integration seems to be in vogue. I'm going to throw a general question out to you. I know it's hard, but perhaps I can narrow it a bit by saying, do you believe that all students should be integrated into the so-called regular classrooms of this province?

Mrs Weigen: In a way, I do, but it's an individual decision from the teacher and the psychologist. They should be because it's a wide world and they should mix, if they're able to. I've had a lot of experience, 30 years, volunteering, getting paid as a psychology technician, doing tests and observing children in a learning disability setting and working with kids and observing. I also worked at Dunlace school in 1989 and 1990 as a special-ed tutor. But unfortunately the budget was cut, so all part-time help was lost, and the students really need all the extra help they can get.

I also want to say that I observed at Dunlace school that the next room was filled with computers stacked up, empty. I think somebody should look at that. I think for special ed you don't need a computer, you need practical skills, because the object is to give them a livelihood. I've taught children who have worked for the post office and another child who actually became a short order cook; he had dyslexia. I believe in the practical skills.

Mr Bradley: I admire your enthusiasm and desire to work with such children because it requires a good deal of talent. It requires not only education that can be listed on paper; it requires a great deal of empathy for the children.

Mrs Weigen: And a lot of patience.

Mr Bradley: A lot of patience and a lot of understanding.

Mrs Weigen: I've always loved children, ever since I taught Sunday school as a teenager.

Mr Bradley: That's good to hear. I remember going to Sunday school many years ago.

I'm going to go to this question, then, because I try to frame a lot of questions in terms of present-day financial realities, which I think we have to. I don't like having to do it but that's the world we live in and our government other governments have to face that. Given the choice of continually reducing the resources available to children in so-called regular classrooms, that is, children with some disabilities in a regular classroom, or putting those children together in a classroom where they would have a lot of expert and sympathetic assistance, what would be your choice? I know that's an awful choice, but you're really describing reality when you see what's happening.

Mrs Weigen: Right, this is realistic. I would put them together first with a lot of help, extra tutors etc, together. Then I would move them out as they progressed, to give them self-esteem etc, into the classrooms and let them mix with the normal flow of children, if they were able to. It's an individual case. I can't say cut and dried.

Mr Bradley: What is your observation from your experience of the acceptance in 1994 of special children in so-called regular classrooms? Years ago they might have been made fun of because public attitudes were not as progressive as they would be today among the general population. A lot of those kids, when I went to school, had some rather nasty labels placed on them.

Mrs Weigen: This is the trouble. I recall reading of a case where a child was labelled mentally retarded. They thought she was mentally retarded until they did an IQ test and found she was about 120, which is above average. She just got the wrong label and she was put through the program. We have to save situations like that.

Mr Jackson: They called her slow.

Mrs Weigen: Yes.

Mr Bradley: Are the other children in the room accepting of having exceptional children in the room? Do they consider it a nuisance or someone they can pick on or do they tend to be sympathetic and supportive in your observation?

Mrs Weigen: I think if the teacher is empathetic and chooses the way that Mary Jane is going to come into the class, "She's going to join us for gym," integrates her for gym, art, and see how she integrates into the classroom, and not the academic subjects at the beginning but slowly.

Mr Bradley: Is there still a place for institutions? I hate to use this word, because I think it's misused very often and it has very negative connotations. Is there still a place—a regular school can be called an institution—for institutional learning for such children or should they all be placed into regular classrooms? I've observed some children whom it would be a real challenge to deal with in a regular classroom.

Mrs Weigen: I've also done work for a year at the MacMillan centre, I think they call it the Hugh MacMillan Rehabilitation Centre, for cerebral palsy kids. They go with the mothers and they go to the social worker. I'm taking care of the children. In that case, where it's so bad with the wheelchair and the care they need, they should not be placed. But somebody who has dyslexia or a mild case of mental retardation should be placed in the integrated schools.

Mr Bradley: I look at expectations that parents have and it's really been marvellous to see how some children have responded very positively to integration. I get the feeling that some parents, however, watch the television program where there is a young student who is developmentally disabled but very highly functional and integrates quite well into the system. I get the feeling sometimes that all parents, and by gosh, they've got to have this hope at least in their heart, feel that their children are going to be able to fit in as well and do as well. Are there undue expectations in some cases?

Mrs Weigen: Yes. First of all, there's a great feeling of hopelessness and hurt when your child is not so-called "normal," and the parents themselves need counselling by wise and empathetic people. It's not just the child, but the parents are looking after the child in a private system, and why they sometimes become obnoxious is that

they're not getting scratched. It's very important for the parents to feel that the system is doing the best for the child. It's a terrible loss and let-down for the parent.

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Mr Bradley: This is a lob ball question, particularly from an opposition member, but I'll throw it out there; you'll hit a home run with it. Is it your observation that we need more money to be placed in the field of special education to make it more effective?

Mrs Weigen: I don't think it's more money; it's the thought behind the program. I think you can do a lot with a small amount of money. It's not just the money involved; it's the experience of the teachers. They don't have to be PhDs; they just have to like the child and feel empathetic. You know, you don't need this PhD or MA; you need somebody who's caring. What I do is I play cards with the kids and get them on to skills. I teach them money management, practical skills. I would throw away the computers. Except for the very elementary computer that has pictures that they can press a button and get, other than that I think the government is spending too much on computers, and the cost escalates. That's just my opinion.

Mr Jackson: Thank you very much, Joanne. Building on the question asked by a member of the most recent government from the one we have today, you answered a question with respect to funding interestingly. I'm always curious to understand why, when Bill 82 was first envisaged, we identified children and then we funded on the basis of identified need, which for special education in particular is pretty critical, yet the funding model was completely reversed about five years ago under the previous government. There was a small envelope of dollars. It was a mean average and yet there was no real effort to determine exact need, and much of the criticism we hear out there is that there's wide disparity among school boards as to the kinds of programs available and/or the least costs of the programs are the ones they say are the ones needed for their board.

I mean, we've completely shifted the paradigm on its ear in terms of dealing with individual needs for children with learning disabilities. I wonder if you have any thoughts on that based on the response you gave to Mr Bradley, who was much relieved to hear that it wasn't the funding issue, but I still see it as an identification needs assessment moving to—

Mrs Weigen: You definitely need the assessments of a skilled MA psychologist to assess the children, but in the classroom you just need sympathetic teachers who are trained and skilled in teaching the children. I don't think all the money in the world is going to help the program as such. A little bit of money will help, but I think probably, in this cost-cutting time, you don't need huge funds for special ed.

Mr Jackson: How do you interpret the fact that only a handful of applications ever make their way to the tribunal in a given year?

Mrs Weigen: If it wasn't for my husband seeing it in the paper—

Mr Jackson: I'm sorry; I didn't mean applications for

the position on the tribunal. There was a time when we were knee-deep in appeals—they weren't called appeals in those days actually—and now there is just a handful that ever make it before the tribunal to which you were applying to be a member of. That was the nature of my question.

Mrs Weigen: Right, legal appeals. Is this what you're stating?

Mr Jackson: Yes, once they've passed through the identification and placement review committee, the final appeal is your tribunal, and your tribunal is dealing with basically parents or guardians advocating on behalf of a child with special needs who are challenging the school board's contention that it has a program to meet their needs.

I don't mean to oversimplify each appeal, but there are these problems in Ontario today: Hardly any ever get to your level and generally always they deal with the fact that their assessed needs are not being met. This has been, again, part of the paradigm shift. We were getting too many applications, but we have a process which responds much in the way you have. It's not a matter of money; it's a matter of the individualized program. I was wanting to determine if you were aware that there are only a handful of cases that ever even get to the tribunal.

Mrs Weigen: I wasn't aware of that. I just met Darlene at 1:30.

Mr Jackson: Maybe Mrs Witmer has a question.

Mrs Witmer: Perhaps I could follow up on that. How much information do you have about the role of the committee and the actual number of cases?

Mrs Weigen: Actually, Darlene gave me a sheet, but she took it away; she said she wants the sheet back. I'd like to take it home or Xerox it and study it.

Mrs Witmer: I guess I have to tell you, I've been sitting on this committee now for a couple of years and it really makes me wonder how people can be appointed to a committee and not be familiar with the role and the work that they're going to be doing. I'm just a little surprised.

Mrs Weigen: Yes, I really would like a Xerox copy.

Mrs Witmer: Although there are very few students who will actually come before your committee—I think it indicates somewhere that we're seeing only about one or two—when people do appear before the committee, it is important that people sitting on the committee understand the role. I can see where you have a lot of expertise in the classroom and you've had expertise beyond the classroom. However, as a member of this committee, your role would certainly be quite different.

Mrs Weigen: It would be a listening role and making a decision, I assume.

Mrs Witmer: You say, "I assume." I find it unbelievable that people come here not fully understanding what it is that they're going to be involved in. I think it's rather unfortunate. I know you're well-intentioned.

My colleague referred to the fact that there is discrepancy throughout the province as far as the willingness or the ability of school boards to offer special education

services and to integrate students into the classroom is concerned. I think you yourself have alluded to the fact that there are not enough special education tutors or assistants, whatever we call them, available. How do you think integration can be implemented more effectively? I will personally say to you that it's not working well in all situations. We have a government now that's decided: "We'll all integrate. Whether it's suitable or not, we're going to put everybody together. We're all equal."

Mrs Weigen: It's not that. They say that in life a child is born to live and that they're all equal, but they're not all equal. Some are brain-damaged, some have medical problems and some are high achievers.

Mrs Witmer: What would you do to make sure that integration occurs in a more effective manner than is presently occurring, Joanne?

Mrs Weigen: First of all, I have a daughter who's a teacher herself, who graduated with a BA five years ago from U of T. I think the faculty of the U of T should have subspecialties, because there are not enough jobs now for teachers. They should take a couple of courses and have subspecialties, where they come out as trained teachers who are able to deal with the population of learning-disabled children. There's a lot of talent there, but it's not being used.

Mrs Witmer: I think we're going to see some changes. I think we're going to see teacher training expanded, probably to a two-year program, simply because of what you've indicated. Teachers just simply are not able to cope with all the situations that are being presented to them within the classroom. For example, these children who have special needs are put in with one teacher.

Mrs Weigen: The teacher is overwhelmed.

Mrs Witmer: Exactly.

Mrs Weigen: She needs an aide. There should be money for an aid or some volunteer from the community who's willing to work, another pair of hands.

Mrs Witmer: Yes, that's right.

I guess you don't know your role that well, but I'm just wondering if there's anything that the special education tribunal could do. I don't think there is. Do you see that tribunal being able to do anything at all?

Mrs Weigen: They could go into schools, write simple reports, not 10 or 12 pages but just send memos out, one page, because the average person's eyes can only intake one page. Send that out monthly. Have monthly training sessions or meetings. Have a continuity—just don't send the teachers out there and leave them there for years—so they feel like somebody's looking after them and caring about what they do. There must be continual learning on the part of the special-ed teachers.

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Mrs Witmer: I guess the problem at the present time is that the quality of special education throughout the province is very different, and certainly the ministry doesn't seem to be taking any initiative in ensuring that there is the necessary support available and that school boards do provide the necessary services. That's one of the biggest problems, I can tell you.

I've been involved as a teacher and as a trustee and I still continue to get calls from people across the province who simply know that their child has special needs but the school board is not committed to helping those families and the ministry's not providing the push and the shove.

Mrs Weigen: Number one, people of means—you know, above-average people of means—hire a tutor for their child, get individual care.

Mrs Witmer: Exactly, if they have the financial resources.

Mrs Weigen: If they have the means. Basically, I feel that in the Income Tax Act, for people with lower means who pay out the money for the tutor, it should be like a tax-deductible expense, just like you go to the dentist and you get, like I had, a bite plate made for my teeth because I'm a grinder. It's a tax-deductible expense; it's a medical expense basically. It's an educational expense and it should be deducted, used for the income tax system, so people are more used to doing when they want to have tutors.

Mr Marchese: I think Ms Witmer has identified the fact that there probably have not been any ministry guidelines for appropriate levels of service for the delivery of special ed for quite some time. It isn't a new problem, but rather a very old problem, in terms of creating system-wide criteria and enforcement mechanisms as well. I agree with her that it continues to be a problem in terms of how we deal with it, because we haven't done it in the past either.

There are several things I want to ask, quite a number of different questions. First, did you get any information at all about what this tribunal is all about?

Mrs Weigen: Just one page, and it was a map of the location here, so I followed the map.

Mr Marchese: That is all you got? You got no other information when you applied for this position?

Mrs Weigen: I got this.

Mr Marchese: And does whatever you're about to show me give you enough information about what this tribunal is all about?

Mrs Weigen: These terms of reference for the review of appointments in the public sector, this is what I got.

Mr Jackson: How this interview will go.

Mrs Weigen: Yes.

Mr Marchese: The issue of segregation versus integration continues to be a very important debate, and I don't think we've solved it. The problem with segregation is that it segregates kids in a way that is much more harmful, in my view, than integration. I think they both carry problems. But when you separate students off from their regular classroom, in my view and all the research I've ever read, it does more damage to students.

Mrs Weigen: Yes, their self-esteem is shattered.

Mr Marchese: But the educational systems have always argued that we separate them to help them. My view is that we separate them to make it more useful and more easy for the teacher to teach those who learn much faster, but we haven't done students any favours. Do you

agree with that general thrust of thinking?

Mrs Weigen: I agree with your thinking. We haven't done students any favours.

Mr Marchese: Any favours at all.

Mrs Weigen: No.

Mr Marchese: The problem with integration is that if we put them into the classroom without the support and the knowledge that special education teachers have, it's also a problem, because if you segregate them in an integrated model, you still have the same problems.

Mrs Weigen: It's the same problem as the gifted child. I think there's the gifted child at Earl Haig school. They're in a school with other kids who come to do—because I have a friend teaching there—theatrical work. There are other children to mix with in the recess time and everything. It should be mixed.

Mr Marchese: You mentioned something that I want to challenge a bit. You talked about the whole idea of visiting a classroom and saying there were so many computers in special ed and that's not what they need, what they need are the more concrete experiences.

Mrs Weigen: It was where I was tutoring, the next room. I wish somebody would go to Dunlax school on the second floor and find those computers, because it's a waste.

Mr Marchese: Right, but the point I want to make is that if we take the attitude that those special education children don't need the computers, we reinforce the exact problems I'm talking about; that is, that they don't have the skills. They really need concrete, practical knowledge to survive in life, but let's not worry about their intellectual needs, because they really can't handle that. If we take that approach, as I think many schools have, high schools and elementary schools, then what we in fact do psychologically is to segregate them intellectually and delimit their abilities. Don't you think this is happening?

Mrs Weigen: Don't forget their intellectual abilities are lower anyway. They're not on the average level, the high level that we're talking today. Don't worry about their intellectual levels being lowered; just worry about them getting practical skills and earning a living.

Mr Marchese: But that's my concern, exactly this psychological problem that we're dealing with in the educational system that's complicating things, because as soon as we say that they have limits, we in fact create self-prophecies. That has been a problem in the educational system for a long time. So if our expectations are automatically lowered because they're not learning, then those kids will never learn, because we build in a poor learning model.

Mrs Weigen: There are children coming through the American school system who can't even read, and the teachers pass them year after year. They get out with diplomas. They're useless in society.

Mr Jackson: But they have great self-esteem.

Mr Marchese: If I can give you experiences of the Italian community in Toronto, and the Portuguese community now, thousands of those students are in special ed and shouldn't be there. I recall not my own experi-

ence, but thousands of students my own age.

Mrs Weigen: That's too bad.

Mr Marchese: It's an insufferable experience. Many of them were told, of course, that they were good with their hands, the Italian immigrants. If you're good with your hands, that means you have practical skills but no intellectual skills?

Mrs Weigen: Perhaps it was a language problem they had in the first place.

Mr Marchese: But that's the point I make, that as soon as teachers begin to say that they have problems, and if they say that is a language problem, then already, once we've done that, if it's just language for the moment, let alone how they look and how they dress and their attitudes, whether they're rough, whether they have accents, all those other things, once we begin to do that, then we reinforce poor academic models on those kids and then we stream them into the deadend high schools where we teach them how to survive.

Mrs Weigen: They shouldn't go to the high schools. I believe the government here should have vocational training schools.

Mr Marchese: They do. That's the point.

Mr Jackson: He called them "deadend high schools."

Mr Marchese: "Deadend" meaning that by grade 11 most of them drop out. They don't end up in colleges and they certainly can't get to university. But we teach them those little skills to survive because, as we know—

Mrs Weigen: Such as carpentry.

Mr Marchese: There are some serious problems in this field. Let me ask you another question, because they identified it here in the research that we've got. There's this gentleman called Ken Weber. He's a former chair of the Ontario Special Education Tribunal who acknowledges that the process is intimidating to some parents. However, he also points out that of the thousands of IPRC meetings held since the Education Act was amended in 1980 to provide for them, only a handful have generated appeals and litigation. He suggested this is an indication that, generally speaking, the process is satisfactory. I think he's absolutely wrong. The problem is that parents of course are incredibly intimidated.

Mrs Weigen: They don't want to fight.

Mr Marchese: They don't understand the system.

Mrs Weigen: That's it, the bureaucracy of the system.

Mr Marchese: Nobody empowers them to learn how to deal with that. If parents knew the problems they have once they're placed in special ed, in that they're locked in literally for life, they would be fighting it. The problem is they either have language difficulties or normal parents just don't know how the system works and they're completely intimidated, and that's why we have few appeals.

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Mrs Weigen: Everybody who's gone through university knows through hard experience how the bureaucratic system of the university works, or they wouldn't have gotten their degree. Because you have to take this course to get into this course and follow the rules.

Mr Frankford: This discussion recalls to me a family in my riding that came to see me with two autistic children who are totally unmanageable, really. I think this condition tests the whole system, the whole approach, and I wondered if you had any experience and any thoughts you'd like to share on it.

Mrs Weigen: Actually, these autistic children were hospitalized at Verdun, which is a psychiatric institute. I don't know enough medically to speak as to whether they should be at the psychiatric institute. I don't think they can be in a proper classroom.

Mr Frankford: It seems to me that these children are essentially uneducable and I think the idea of integration cannot apply.

Mrs Weigen: No, for that case or severely handicapped children, like cerebral palsy kids, there's also no integration. But I don't know enough about autistic children. I don't think there are enough trained staff, because it's usually on a one-to-one basis dealing with an autistic child. That's worth a lot of study. It's very interesting.

Mr Frankford: Yes. This is one family. They belong to an association. I gather it's not a common problem, but for a small number of families it's a very, very heavy problem.

Mrs Weigen: But these are usually cases that are put in psychiatric hospitals or institutions and kept there.

Mr Frankford: I think that's the question, as to what sort of institution. I don't think anyone wants to see any psychiatric hospital per se but some sort of sheltered environment.

Mrs Weigen: Maybe that's the best solution they have at this time, to do it that way. But it's a very interesting subject, and I'd like to read more on it.

The Vice-Chair: Thank you. We appreciate your attending before the committee today. We wish you well.

JUDITH TURNER-MACBETH

Review of intended appointment, selected by the government party: Judith Turner-Macbeth, intended appointee as member, Barrie Police Services Board.

The Vice-Chair: Our next witness today is Judith Turner-Macbeth, intended appointee to the police services board, city of Barrie. If you have an opening statement or any comments you would like to make, feel free to do so. If not, we would proceed with the questioning.

Ms Judith Turner-Macbeth: I would just like to say good afternoon and thank you for having me here. I'm ready for your questions.

Mr Waters: It's a wonderful day to come down from Barrie, I can imagine.

Ms Turner-Macbeth: It's terrific driving, yes.

Mr Waters: Probably better than yesterday but not a lot.

I guess we might as well get to probably one of the more burning questions that usually comes up at these hearings, or as we go through this, and that is the powers of the police services board, especially in these times of restraint. Do you think the board should have powers to say that within its community you can't cut here but you

can cut there? Do you think that's what the board should be doing?

Ms Turner-Macbeth: I think the board should be giving some pretty firm guidance in the area of monetary policy for the police services. What you've got to do is to make the best use of scarce resources, and it may be that there's significant room for improving delivery of certain services without expanding the cost factor of doing that. It may be easier for outside people—for example, the board—who are not police officers on the line and entrenched within that power structure to see places where there could be improvement on the delivery of services, and if the board can investigate that and make recommendations on that, I think it should be looking at that. I think that's part of their function.

Mr Waters: Maybe the city comes along and says the police services have to cut 15% out of their budget. Would there be any area where you would say, "No, you can't touch that area"? In other words, are there areas that as a representative on the police services board you would be not in favour of touching, that you would say, "No, this is too important to the community's policing"?

Ms Turner-Macbeth: Going into it, I don't think I would take a positive position on segregating out certain areas that you can't touch until I'd had a chance to look at all of it. I don't have preconceived ideas about what is essential and what is not essential at this stage. I would want to investigate it all.

Mr Waters: With the new weaponry we've allowed, the semi-automatics, how do you feel the people of the city of Barrie and indeed the officers as well are going to take to the new weaponry?

Ms Turner-Macbeth: I think it's going to be a mixed response. I think in Barrie there's a public perception that crime is getting out of control in our city. We've had a recent string of murders and the statistics on break and enter and so forth are alarming. I think people are starting to become frightened of living in their own city. So I think there'll be a significant section of the population that be happy to see those new arms issued because they may think it puts the police back in control. I think there will also be a significant section that is alarmed by the increase in firepower in the police force and in society generally. I don't know if you're going to get a consensus one way or the other on whether it's good or not. I think there'll be a lot of debate about it.

Mr Waters: You touched on society and the problems we're having. Earlier on today we had different people in where we were talking about youth. We all seem to have the same feeling that in our communities there is a problem, whether it be youth or young adults, that somewhere there is a problem. One of the things I'd like to know is your feelings as to what you would like to see the police services board work at or recommend indeed to the police on how we should be moving on this. There's got to be some answer somewhere. My personal feeling is that somehow we've failed our children—I don't necessarily blame the children, I don't necessarily blame us, but somehow society in general—a vast number of kids who have slipped through in the last 10 years.

Ms Turner-Macbeth: I agree with you. I think that if the police services board can help focus the direction of community policing with respect to integrating better with young people and creating a more useful dialogue with them, it may help. I think young people often feel like they're part of a different society and a different culture than the rest of us. If they can be made to feel like we're all in this together and that we need them as much as they need us, we may work towards solving some of those problems with the youth. I think the police need to be out there working with schools and young people in a significant fashion, not just appearing once a year perhaps in a school to talk about safety issues and so forth. They really need to be a presence and really need to be talking with them to find out what their concerns are and what they can do to help them.

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Mr Waters: I just have one more quick question, and then I'll turn it over to my colleague. Going on the same topic, in rural Ontario—and I come from a riding, Muskoka-Georgian Bay, where there's a collection of rather small communities—what we've managed to do is strip the schools out of our communities. We did a wonderful thing. We decided that bigger was better and everybody should ride on a bus for two or three hours every day and go to this big, wonderful jail that we call a school, because it looks more like a jail than a school, and that indeed the parents shouldn't be involved because they're all removed and how do you get there.

I really wonder whether that isn't part of the problem, that whether we look at a city, a small town or whatever, we have to get our schools back to our communities, that we're losing track of our children.

Ms Turner-Macbeth: Yes, I would agree with you. I think probably children who grow up feeling a sense of community are more respectful of that community in the long run, and by alienating them, you're right, they're alienated from their immediate community and the place where they live when they do have to go a long way to travel to school.

Ms Harrington: I think it is important that we have women on police services boards. Therefore, I'm pleased to see you here. Do you feel that as a woman you have a unique perspective on policing?

Secondly, there certainly are changes going on out there, I believe. I've seen them in my area; I represent Niagara Falls. There is more of a sensitivity from our police officers, for instance, on the issue of stalking. I've had to deal with that in the last little while from the point of view of one of my constituents. What further changes would you like to see? What direction would you like to see police going in?

Ms Turner-Macbeth: Perhaps in some areas I would bring a different type of perspective to the board because I'm a woman, primarily because I've had experience in working with women on what are traditionally perceived as some women's issues—domestic violence, sexual assault, that sort of thing—which have been fields that have traditionally been occupied by women. I would have that sort of knowledge and perhaps sensitivity to those issues that maybe my male colleagues wouldn't have. The

more people you have on your board who have that type of experience, hopefully that starts filtering down into the force and their ability to deal with the victims of that sort of thing.

I don't have a great deal of contact with the police in Barrie, but I think on the whole they're doing quite well in dealing with that type of issue and in increasing sensitivity to it, as you've mentioned. I think they're doing quite well and I can't identify for you specific areas that need to be improved at this point.

Mr Bradley: There is a feeling among police officers in this province, and perhaps beyond this province, that their ability to fight crime is being limited by governments and legislative bodies, and perhaps even to a certain extent the courts, that they are out there, they're the good guys, the good women out there to fight crime, and yet the focus of attention is increasingly on the police as bad people and they have to increasingly defend themselves when the public perception is that crime is increasing.

As a member of the police services board, would your general thrust be supportive of the police in carrying out their responsibilities or to continue the path of restricting their ability to fight crime, as I believe has been happening in many jurisdictions over the past few years? That's certainly reflected by the calls to my constituency office which are, I assure you, far more right-wing than my views.

Ms Turner-Macbeth: I'm not exactly sure what you mean by restricting their ability to fight crime.

Mr Bradley: The government just gave them bigger guns, I guess, some kind of bigger guns or better guns, automatic weapons the government gave them that they've been wanting for a long time to be able to have guns equal to the people they deal with, I suppose. On the system of bail, people they know have been consistent problems over the years to the community and there they are out there. In Sudbury we had a case where it is alleged, because I think it might be before the courts, so I have to say "alleged," that a person shot a cop, and that person, in the view of some members of the Legislature and many in the public, should never have been out.

In other words, every time the police try to do something—and I understand they have an agenda of their own as well—they seem to be having their hands tied by us do-gooders who feel that they must impose upon themselves restrictions far beyond those which the crooks must impose upon themselves, to put it in very basic language.

Ms Turner-Macbeth: Issues like bail and parole and so forth are clearly beyond the jurisdiction of the board or even this level of government. I can understand the frustration if, as a police officer, you went through the investigation and the work involved in making an arrest and then found that person out on bail the next day when you think that person remains a danger to society and should not be out on bail.

However, I don't really consider that a hindrance to the police officer doing his or her job or fighting crime as such. Those are issues that, if they're going to be

addressed, need to be addressed at the federal level. I can understand their frustration and I think I would be a supportive member, supportive of the police force, but I would certainly not classify myself as right-wing in any way and I could probably engage in some sort of debate with your constituents about those sorts of issues.

Mr Bradley: You would have a great time, I assure you.

Ms Turner-Macbeth: I'm sure.

Mr Bradley: On the issue of employment equity, the government has brought forward and brought into the House an employment equity bill and proceeded with it. What are your general views on employment equity in the context of—I guess I'll ask a different question first and then get to that. The question would be, do you think that all police officers should be capable of breaking up a brawl at the toughest local tavern?

Ms Turner-Macbeth: No.

Mr Bradley: So not all officers have to do that? So we just hire some who are tough enough to do that and then others who are not tough enough to do that?

Mr Jackson: There's a loaded comment.

Ms Turner-Macbeth: Yes, wasn't it? That was sort of loaded, wasn't it?

Mr Bradley: That's a very basic question. In St Catharines we used to have a place called the Franklin Tavern. It's got a different name and is a nice place now. I always asked the question, "Can you break up the fight at the Franklin tonight?"

Ms Turner-Macbeth: I don't think that's an appropriate criterion for hiring. I think the police, if they're not involved in more than that, then they absolutely need to be involved in more than that if we're going to have valuable communities. The officer who can break up a brawl at the Franklin Tavern is not necessarily the best person to be out there perhaps working with the young people in the schools. There are all sorts of different functions within policing and there are all sorts of different types of people who can fill those functions. Therefore, I see no problem with employment equity and it causes me no personal concern.

Mr Bradley: Do you believe that the government should be implementing a policy of employment equity in police forces across the province?

Ms Turner-Macbeth: Yes. In fact, it's legislated as part of the police act right now.

Mr Bradley: And you are supportive of that?

Ms Turner-Macbeth: Yes.

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Mr Bradley: The police will come to you and tell you they don't have enough money. After they've been told that there isn't any more money, they'll be there to say: "We don't have enough money and, of course, if you don't give us more, go and get it somewhere, then the world will end. There will be much more crime and so on." You have a legal background which I think if of some assistance in that regard. How would you tackle those problems of the police coming and saying, "You will be a irresponsible member of the board because you

won't give us more money to have more police officers and more equipment out there to fight crime"?

Ms Turner-Macbeth: I would look at their budget issue seriously, but I certainly wouldn't let them impose that sort of responsibility on my shoulders. As I mentioned earlier in speaking with Mr Waters, I think there is probably room to examine budgets with a way of making better use of resources. One issue that comes to mind is perhaps training.

I don't know what the training budget is in the Barrie Police Force, but there's an awful lot of community knowledge and expertise out there that could be used in training officers. You don't necessarily have to send them off on formal education courses for everything in order to train them to be effective officers. You can make use of the community resources to do that and you would find people who would be more than happy to share their knowledge and help towards that community policing function within that. You may be able to, for example, increase the level of expertise within your force at a relatively small cost.

Mr Bradley: There is an issue that has had a lot of public scrutiny, that one being the issue of what you should put in the local newspaper and the local newscast as to when a crime has been committed.

There was a standing committee on the Legislative Assembly in 1991 which did a comprehensive review of the Municipal Freedom of Information and Protection of Privacy Act. The committee believed that the reporting of the fact that a crime has been committed and the name of the street or general location where the crime occurred is sufficient to allow public scrutiny of police activity and make the public aware about crime in a particular neighbourhood.

In other words, this seems to suggest that the victim doesn't necessarily have to be named. Some newspapers have a policy where they don't even name the person who's allegedly committed the crime until such time as that comes to trial. What are your views on what should be published by the police? What information should be provided to the news media by the police when a crime has been committed, first of all, and, second of all, when a person is released from prison with a background that would be of concern to the local neighbourhood?

Ms Turner-Macbeth: That's a tough one. I think to a large extent the answer depends on the nature of the crime. For minor crimes, I think the street and the location, as set out in the report, are probably sufficient. There's not a lot of community worry about smaller types of things. The violent offender who's released from jail causes problems. It causes ethical problems for me because if I knew that person was living next to me and my children, I'd be very concerned.

On the other hand, I can clearly see that by releasing details about that to the public, you're continuing to keep that person effectively in jail and restricting their opportunities for the rest of their life. I don't have a position that I can take firmly on that. I can see both sides of that issue and they both cause me some concern.

Mr Cleary: You had mentioned that you had much to

offer being a lady member of the police services board for the first time. Has Barrie ever had a lady on the police services board?

Ms Turner-Macbeth: No. As a matter of fact, there is one other provincial appointment on the board who is a woman. Our mayor is also a woman and she's mandated to be on the board. So there will be three of us if I'm appointed.

Mr Cleary: I'm glad to hear you say that you would be supportive of the police officers. I am very supportive of them because I was a police officer at one time. I'm telling you that the public is just not aware of all the things that are going on until you are in their boots.

Ms Turner-Macbeth: I'm sure.

Mrs Witmer: Who invited you to apply for this position?

Ms Turner-Macbeth: I was approached actually by a colleague of mine who had been approached by our local member to see if she had any suggestions, and she suggested my name.

Mrs Witmer: And your local member is Mr Wessinger?

Ms Turner-Macbeth: That's right.

Mrs Witmer: I notice that your curriculum vitae was sent to that individual here and then forwarded to Mr Christopherson. Was there public advertising in the newspaper?

Ms Turner-Macbeth: No, not that I'm aware of. I shouldn't say "no;" I'm not aware of that.

Mrs Witmer: Would there have been advertising in the newspaper at all for the position?

Interjection.

Mrs Witmer: Not necessarily? How many other people applied for the position? Does anyone have that information?

I thought that part of this process—at least it is in my community—was that there is advertising in the newspaper. But what we unfortunately discovered, and I think it needs to be made public at this time, is that an ad was placed in our local newspaper at home and people were invited to apply for the position. I received numerous phone calls from individuals who were interested in the position and wondered if they should apply or whether it was a fait accompli; would the local NDP members make the decision and the recommendation? I encouraged these people to apply, thinking it was indeed an open process and the best-qualified individual would get the job.

However, then I received a phone call one day from someone who's a member of a visible minority group—and this was about three months, maybe two months, after the ad was in the paper—indicating to me that the individual had received a call that day from one of the local NDP members asking that individual if she could put forward the names of other visible minority members because they wanted a visible minority person on the police board.

That person, I have to tell you, was absolutely shocked. They had seen the ad in the paper, they really did think they were looking for the best candidate, and

now, suddenly, it appeared that all of the names that had been submitted had been totally overlooked; the government had decided it would have a visible minority person put into the position. She was very upset—very upset. I guess this is a case of employment equity, but I think the government should have been honest. Why waste more money on government advertising if you really don't have an open competition and if you really are looking for a visible minority candidate?

The other thing that really bothered this individual is that if she were going to put forward names, it would appear that those people would be in the hands of the NDP and would have to conduct themselves accordingly.

I have to tell you, in my own community the process for applying to the police board has left a very bad taste in the mouths of many individuals. I hear you say that you were indirectly approached.

Ms Turner-Macbeth: If I can give you any assurance about that, I have no political affiliation with any party and my colleague who approached me has none either. We both know our sitting member professionally because he's also a lawyer, so he knows us in that respect.

Mr Jackson: I've had experience with a lawyer application for the police services board and I have serious concerns about that because of conflict. I had occasion to call Mr Christopherson's office because Minister of Labour Bob Mackenzie's son is responsible for all these appointments. He was very forward and very forthcoming when asked, and he was able to share with me the total number of applicants, how many were women, how many were visible minorities. I had problems with the Halton appointment because it was a labour organizer, card-carrying NDPer and a lawyer.

Your case is a different challenge for me. I personally feel strongly that we need more women participants on police service boards, but I have a real serious problem with lawyers. Let me say to you why. At least one woman member of our board in Halton had to sign extensive documentation distancing herself from a whole scope of practice in order to become a police commissioner. I thought it was rather punitive or that she was being martyred unnecessarily in order to achieve this all-important arm's-length relationship.

Here are a couple of examples. You've indicated your scope of practice includes family law. As a member of a police commission, you would be privy to all sorts of personnel information about a given officer who is having emotional difficulties, family problems manifesting themselves and the need to put him on a drug program, on an alcohol program, on therapy or whatever. The example used to me by police commissioners who've come up against this conflict is, now the lawyer, during the regular scope of his or her professional activities, is advocating on behalf of the divorcing wife to say, "Officer, was it before or after you had your nervous breakdown that you decided you were having problems with your marriage?" That's just one example, and I know many examples.

I can refine it for you as a woman who is expressing awareness and will bring additional sensitivity to the issue of the point at which the police officers are making

charges of domestic assault. This is a very critical, pivotal time in terms of charges and countercharges. We're seeing some very negative practices resurfacing. How does that position you as a lawyer whose scope of practice includes certain activities where you would be advocating on behalf of the husband or the wife in a domestic situation?

Ms Turner-Macbeth: Actually, I need to correct you, because my practice doesn't include that. The only family law I actually do now is not law so much as mediation. I do family law mediation work, where I'm an independent neutral who comes into the litigation in an attempt to get the parties to resolve their issues. I do not have family law clients as such and haven't had since early in my career back in the early 1980s. Those types of issues are not likely to apply to me. Clearly, if I was involved in a mediation and one of the persons was an officer, I would probably have to refer them to a different mediator, if I knew anything of them. It's very important that I be a neutral, and if I know anything about them, I am no longer a neutral.

1530

Mr Jackson: That's additional comfort. I hope you appreciate where I'm coming from.

Ms Turner-Macbeth: You're perfectly justified to ask me those questions.

Mr Jackson: I've seen cases and I've seen problems currently with the existing appointee, to whom I objected, which is like shouting up a pole in terms of the activities of this committee, but it serves as an effective forum. I must say that you didn't present the same kind of conflict. This lawyer was knee-deep in criminal law and was rubbing shoulders with the officers to whom he was responsible on a daily basis.

Ms Turner-Macbeth: Again, I haven't done any criminal law since the early 1980s.

Mr Jackson: That offers me a lot of comfort with your application in that respect. You do not receive any referrals, nor does the colleague who referred you to this position with Mr Wessinger's office?

Ms Turner-Macbeth: No, absolutely none. When I see Mr Wessinger, I say, "Hello, Paul," he says, "Hello, Judith," and we go on our way. We don't have any deeper relationship than that.

Mr Jackson: I was only looking for the financial one.

Ms Turner-Macbeth: No, certainly not.

The Vice-Chair: Thank you very much for attending before the committee. I wish you well.

CHRISTINE FORSYTH

Review of intended appointment, selected by the third party: Christine C. Forsyth, intended appointee as member, Council of the College of Nurses of Ontario.

The Vice-Chair: Our final appointment for this afternoon is Dr Forsyth, an intended appointee to the Council of the College of Nurses of Ontario. If you have some opening statements or remarks, please feel free to do so. If not, we will proceed with the questioning.

Dr Christine Forsyth: I would like to say thank you very much for inviting me to appear before the committee

and also to say that I consider it an honour to have been nominated by the minister for this position.

Mrs Witmer: Christine, my comments have to do with the new Regulated Health Professions Act and your personal opinion of that act as a nurse. I know there's been a lot of discussion and debate.

Dr Forsyth: Are you asking me whether I am a nurse? Or are you a nurse?

Mrs Witmer: No, I'm asking you as to your knowledge of the act and your opinion of the act.

Dr Forsyth: I think the act is a great advance in terms of public protection and public choice, opening up accessibility to health care while providing very strong regulatory safeguards for the public. Also, I think the act represents a real evolution in the province's ability to provide greater choice to consumers for the kinds of health care they need while knowing that there is in place a very clear system for protecting them from any abuse.

Mrs Witmer: When you say there's more choice for the consumer, could you just elaborate on how you see that choice?

Dr Forsyth: I think it's been made clear through the act that there are certain core services that are permitted to certain groups of health professionals. There is also protection against performing any act that would be considered harmful to the health care consumer. Beyond that, the consumer is free to choose among a very broad variety of procedures in order to take preventive measures and health care.

Mrs Witmer: As a nurse, is there anything you would have changed within the legislation as it pertains to the nursing profession?

Dr Forsyth: I'd just like to make clear that I'm not a nurse.

Mrs Witmer: You're not a nurse?

Dr Forsyth: No, I'm not.

Mrs Witmer: All right, but you are being appointed to the council of the College of Nurses.

Dr Forsyth: Yes, I'm being appointed as a representative of the public to serve as one of the new public members. The council composition has been changed to include far greater numbers of public members so as to ensure that the public interest and the right to know and monitoring of the system is carried out effectively under the new act.

Mrs Witmer: That helps me to understand the response that you just gave me.

There's been some concern about the new midwifery legislation. Do you know what the concerns of the nursing profession are regarding that particular piece of legislation?

Dr Forsyth: No, I'm sorry, I don't.

Mrs Witmer: There's been a suggestion made that new legislation should be introduced which would require midwives to be qualified nurses and that they be regulated by the College of Nurses on the grounds that obviously that's something that nurses have done in the past. Do you have any comments on that suggestion that's been put forward?

Dr Forsyth: It seems to me that the act, having already been passed, there are very clear provisions in place for the profession of midwifery specifying exactly what services midwives may provide to Ontario consumers. There is also a role for nurses in the process of birthing and delivery and health care, pre-natally and post-natally. I think that, as far as I'm aware, the College of Nurses is intent on working out a very amicable and collegial process for working with midwives within the Ontario health care system that will allow nurses to perform all the health care giving that they are capable of providing and are allowed to provide under the legislation but in concert with the rights of the midwives now to provide this service in the province.

Mrs Witmer: So you don't support them being nurses first.

Dr Forsyth: I don't have a very clear opinion on that at this point.

Mrs Witmer: Why do you think you were nominated for this appointment to the council? What expertise would you have?

Dr Forsyth: I have about 20 years' experience working as a volunteer director in various organizations in the community, community services. Through the YWCA I was responsible for the direction of education, training and social work to women and their families. I've also been a public director of arts organizations in the province, in the city.

In my professional career, while I was an executive with a large life insurance company, it was my direct responsibility as a senior manager to work on the process of financial services re-regulation within the Canadian framework and at the provincial level too. That was a very long-term process that took place over a period of 10 years. I was intimately involved with that.

My role was providing policy and planning advice to management and to liaise with government and also to have a very strong role through the industry associations and, in my public affairs role, with the public, because within the financial services framework—and I realize that financial care and health are different, but none the less the bottom line was to protect, was to offer the Canadian consumer of financial services and financial protection the broadest possible range at the most economical cost while being absolutely sure that whatever mechanisms were in place would protect their decision, so that there would be very clear designations as to the certification of individuals qualified to give financial advice to a person and that they would be sure that there would be a regulatory framework that would enhance their confidence in those abilities.

From a professional perspective, I have been through this process on the financial services side and am acutely aware of the difficulties, the dislocations and also the challenges in broadening opportunities when you open up freedom of choice to consumers.

1540

Mr Jackson: I was very intrigued by your four years with Intergovernmental Affairs. Could you fix for me in time exactly about when that was?

Dr Forsyth: Yes. It's not four years with Intergovernmental Affairs; it was two years with the Council of Ministers of Education, Canada and two years with Intergovernmental Affairs. The period that I was with Intergovernmental Affairs was 1978 and 1979. I was with the Council of Ministers of Education, Canada in 1976 and 1977.

Mr Jackson: Did you work at all with Darwin Kealey during that period?

Dr Forsyth: Yes.

Mr Jackson: I know of Darwin's involvement with the Ministry of Health and I'm very intrigued by the depth of your CV in this area, but the page hasn't permitted you to give a fulsome review of that.

Dr Forsyth: No.

Mr Jackson: My area of concern is with the fact that Ontario is producing so many nurses without the resultant number of jobs. I wonder if, given the depth of your background and the limiting scope of the college you will be working with, you see a role for advising the government or powers that be at looking at strategic human resources planning for the nursing profession and integrating that. Do you see a broader role? Because I think that's a critical issue. We're just producing, at taxpayers' expense, far too many graduates to go to the United States and feed their health care system. I have really strong concerns about that, aside from their regular mandate, which comfortably fits. Your background would exceptionally prepare you to assist in that public debate and assist governments in developing policies.

Dr Forsyth: My response to your question would be that with the rationalization of our health care system under the new legislation, I would hope that with the changes towards the community health services, the growth in primary care in localized communities, where the hospitals have been required to cut back because of the very severe financial constraints under the difficult economy, rather than decreasing the scope of individual health care professionals, I would hope that in working with the college—and part of its mandate is to strategize in terms of the potential of the nursing profession within the health care system—there might be a chance to—

The Vice-Chair: Thank you. Mr Waters is next.

Mr Waters: Welcome to the committee. You're going on the board, as I understand it, to represent us, the public, and not as a nursing professional but indeed as a person who has a number of skills, which your CV goes quickly over, that we feel you could use or that we could use sitting on the committee to bring this whole new thing into some shape and form. I was wondering if you could briefly go over some of those skills that you think you bring that will help us try to shape this committee from the public's perspective, not necessarily from the nurses' perspective but from the public's perspective, which you will be representing on this committee.

Dr Forsyth: I'm not quite clear what you're—

Mr Waters: Maybe what I should do is take one issue. The scope of practice hasn't been fully determined. The nurses have a definite idea of what they would like to see as the scope of practice. As the public, we might

have a different idea. I was wondering how you feel your work history and that would relate to thrashing this issue out so that everyone has an understanding of what the scope of practice of nursing will be.

Dr Forsyth: Thank you very much. I appreciate your clarification. Yes, I think that what public members can bring is a broader perspective in terms of needs as well as services provided. I think in terms of my own background, the area of planning, my own interest has been in policy analysis, in developing alternative strategies, in viewing the bigger picture and hopefully bringing to bear the individual perspective; in other words, the impact of larger political or policy initiatives on the individual. So what I feel that I would bring is a very long-term experience in extrapolating from the immediate situation, and this is going beyond the particular situation of the nursing profession as it is practised and as it has been practised and perhaps looking at a broader perspective as to how it might be integrated into the changing environment and be responsive to, I would say, more sophisticated consumer demand for quality health care and understanding how that might impact on individuals and on their choice and on their expectation of safety and protection.

Mr Waters: Right now my daughter is in her last year of training. She and I have talked about her future life and, as do most young people right now, she has some concerns. One of the things that I think we both actually agreed on was the fact that nursing will change, that indeed, as people spend less and less time in the formal hospital setting, nursing will indeed go—it used to be the Victorian Order of Nurses would be out in the public. Maybe they will work out of a hospital, but I think you will see nurses throughout our community, as we move to more community-oriented health care. I was wondering how you feel about that. Do you feel that should be part of the training of our nurses who are going through the system now or should we just let it sort of develop on its own, or do you think we should start preparing our young people who are going through for that?

Dr Forsyth: I think it's important to prepare our young people for all the opportunities that lie before them because I think that rather than decreasing the possibilities for nurses, the new regulations increase the potential for nurses within the system. I really feel that there's a close correlation between the quality of care that Ontarians can receive and the circumstances or work conditions, the quality of work life, of the professionals who are providing that care. In other words, professionals who have been trained properly and who meet the appropriate standards and who are given full support and scope to practice within the regulatory framework, full scope and support to practise their profession, will be in a position emotionally and psychologically to provide the maximum, the optimum health care to their clients and their patients.

Mr Waters: I guess with that the scope of practice becomes an important piece of legislation or set of terms of reference because I know my colleague Mr Wood, down at the other end of the table, represents a far northern riding. For years we've had nurses who actually work in communities and there isn't necessarily a doctor

there and there's an informal sort of scope line where the nurse can do this, but in southern Ontario we lost that. At one time I think we had it here in southern Ontario. Hopefully, this scope of practice will work out a nice definition.

The other thing that nurses are concerned about is midwives. Nurses have a belief that you should be a nurse and then, as an extra credit or whatever, be a midwife. I was wondering how you felt about that.

Dr Forsyth: I don't have any strong opinions one way or another about whether midwives should first of all be registered nurses, be trained nurses, but I do believe wholeheartedly that anyone who is regulated and allowed in this province to provide health care to Ontarians should be fully qualified and fully regulated.

I don't feel prepared, at this point, to talk about jurisdictional questions among the professions. I gather that there were many, many years and hundreds of hours of input among all the professions to arrive at the list of permitted acts and allocation of who should perform them. I'd have to go back over that and perhaps refresh myself about how those decisions were taken, but I assume that the decision to allow midwives to practise midwifery in the province was done with very careful consideration and that they will be required to meet very exacting standards in providing that service.

Ms Harrington: Welcome to the committee and thank you for coming. I'll ask you a question that's often asked here, and that is, how did you get this position? Did someone approach you or did you put your name forward?

Dr Forsyth: I did both in a discussion with a colleague of mine from one of the boards that I have served on. I have not served on a public agency or board before but I have, as I say, given many years of volunteer service. One of my colleagues there suggested that I put my name forward, which I did some months ago and indicated my interest in serving.

Ms Harrington: I think it's important, certainly with the new act coming into force, that we have some very

good people to get it working well, so I certainly wish you well. I hope you're looking forward to it.

Dr Forsyth: Oh, I am indeed. I think it'll be very challenging. It's a very exciting time. It's very much, I think, going in the right direction for our province.

Ms Harrington: Can I ask you quickly, what changes would you like to see? You're going into this with a vision, I think, of improving the system. Are there any particular changes that you would like to be part of?

Dr Forsyth: What interests me and what I think is very important in coming is the inclusion of public participation in all regulatory bodies affecting the health care in this province. This in itself is a major change, the fact that the public does have such a direct role now.

I can see that there will be a period where there will be adjustments necessary, where policies will have to be set up, where there will have to be education for the professionals, but also for the public, to understand their new role and their new responsibilities, so that they are clear that the public does have input. I would hope that as a public member I might be an appropriate conduit for that kind of education, inwardly to the college and to the profession itself, but also outwardly to my fellow citizens in this province so that we understand that there is now a new partnership in health care.

The Vice-Chair: Next will be Mr Cleary.

Mr Cleary: Thank you, Mr Chair. I'm just going to pass on this, to help keep you on schedule, and wish the witness all the best.

The Vice-Chair: Thank you, Dr Forsyth for appearing before the committee today. We wish you well.

Would the members now like to vote on these individually or as a group?

Mr Waters: I move that we vote on them as a group.

The Vice-Chair: Do you concur with the intended appointments reviewed today? Is there any discussion on that? All those in favour? All those opposed, if any? It's carried. They're concurred with.

We'll carry on at 10 o'clock tomorrow morning.

The committee adjourned at 1555.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

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***Marchese, Rosario** (Fort York ND)

***Waters, Daniel** (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)

***Witmer, Elizabeth** (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Abel, Donald (Wentworth North/-Nord ND) for Mr Mammoliti

Jackson, Cameron (Burlington South/-Sud PC) for Mrs Marland

Wood, Len (Cochrane North/-Nord ND) for Ms Carter

Clerk / Greffière: Mellor, Lynn

Staff / Personnel:

Pond, David, research officer, Legislative Research Service

Yeager, Lewis, research officer, Legislative Research Service



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Third Session, 35th Parliament

Official Report of Debates (Hansard)

Wednesday 19 January 1994

**Standing committee on
government agencies**

Intended appointments

Chair: Margaret Marland
Clerk: Lynn Mellor

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Journal des débats (Hansard)

Mercredi 19 janvier 1994

**Comité permanent des
organismes gouvernementaux**

Nominations prévues

Présidente : Margaret Marland
Greffière : Lynn Mellor



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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 19 January 1994

The committee met at 1008 in the Ontario Room North, Macdonald Block, Toronto.

INTENDED APPOINTMENTS

The Vice-Chair (Mr Allan McLean): We will call the government agencies committee to order.

PETER MCCARTHY

Review of intended appointment, selected by the government party: Peter McCarthy, intended appointee as member, Ontario Food Terminal Board.

The Vice-Chair: This morning we're dealing with the review of Peter McCarthy, intended appointee as a member of the Ontario Food Terminal Board.

Mr Peter McCarthy: Thank you very much. I don't have much of an opening statement. I presume you have seen the information of what my background is, that I am involved at the food terminal on the farmers' market, and the agricultural background that I have. So I think it would be just as easy to answer questions.

Ms Margaret H. Harrington (Niagara Falls): Thank you very much for coming in this morning, Mr McCarthy. First, I'd like to ask you, in your opinion, since you've been there at the food terminal for some time, and I gather your family before you was, do you feel that at this point in time it is working well, or would you bring to your new position some ideas for maybe improvement to what's going on?

Mr McCarthy: I think generally it has worked very well. It's had the odd burp. There have been some issues at the terminal, of policy more than anything else, that I see problems with that I would hope there could be changes made. The biggest problem now—do you wish me to identify problems?

Ms Harrington: I asked if you saw any problems, yes.

Mr McCarthy: I think the main thing that is in my mind is the issue of non-Ontario agricultural products being sold on the farmers' market. It is my feeling that that market was intended for the use of Ontario growers to sell their own product and that is what I would like to see happen there. But then we get into a whole bunch of other issues such as the food terminal board has been taken to court, I believe, on two different occasions and has not won.

Ms Harrington: On that particular issue.

Mr McCarthy: On that particular issue, because as far as the legislation is concerned it is not in place. Until the minister sees fit to change the legislation to give the right to prohibit these people from selling non-Ontario product, I don't think the food terminal board is going to be able to do anything about it. Their pockets are not deep enough to continually go to court, especially when you know, with the precedent having been set, they're not going to win.

Ms Harrington: Okay, I understand. So you're saying

that there needs to be, what, regulative change or legislative change?

Mr McCarthy: The act, I believe, has to be changed in the Legislature.

Ms Harrington: Legislative change.

Mr McCarthy: Yes, and of course this has been brought up over the years to the various ministers and they have not seen fit, I guess through time constraints or whatever it be, or other legislation that they thought was more important, so nothing has been done to this. This has been identified for quite a period of time.

Ms Harrington: Do you feel that the other members of the board would agree with you?

Mr McCarthy: I have no way of saying that, because I have not met formally with the other members of the board. I know a couple of them, but this has not been brought up. I'm just identifying my personal feelings.

Ms Harrington: Do you feel that the board is representative of all the interests that should be involved?

Mr McCarthy: Yes. There are representatives from the various segments at the food terminal.

Ms Harrington: And of course the public has an interest in this as well. What do you think about the possibility of a privatization of the food terminal in the future? Have you thought about that?

Mr McCarthy: I've thought about it. I am not familiar enough with the internal workings of the food terminal to make a comment on that. I am a believer in privatization of most issues, let's put it that way, but as far as looking in depth into this, I haven't had the opportunity. I would tend to lean towards privatization, but I don't know the implications of what is involved with the food terminal board to say I think it has to go. There may be reasons that it shouldn't but I am not familiar enough with the food terminal board at this point in time, just through lack of experience at that level.

Ms Harrington: This committee is going out there, I believe, next week to see how things work first hand.

Mr Daniel Waters (Muskoka-Georgian Bay): The food terminal has been where it is for a long period of time. When we had the people from the terminal here, they were talking about the difference in hauling, that originally it was set up for rail, that rail really is not part of the system any more to any extent; it's mainly truck. Looking at that and looking at the congestion of that area trafficwise, is the food terminal, in a modern-day perspective, in the right place? At the same time they've been talking about adding to the terminal. Would it make more sense to move the terminal?

Mr McCarthy: That was attempted in the 1960s. There was land purchased in roughly the Highway 400-401 area to move the terminal.

Mr Waters: That's just about the same congestion, though.

Mr McCarthy: To a larger facility, I mean at that time. But the problem is that the leases in perpetuity at the food terminal, the wholesalers refused to renegotiate those leases, because you see, you go back in time when this food terminal was where the St Lawrence Market is right now. The government at that particular time recognized the problem that they had to move out of that area because of congestion, and the Queensway location was selected. But the wholesalers would not move from downtown Toronto, and one of the enticements was to give them these leases in perpetuity to get them to go. They are there now and they don't want those leases broken.

Going back to the privatization end of things, this is another thing that would have to be dealt with. In some of the information that has been sent to me in the last few days for me to read over, there would have to be compensation paid to these leaseholders to break the leases, which could get to be an extremely expensive project.

But then, going back to your question about where it is, I think the board has dealt very well with some of the changes that it's made to accommodate the fact that it's probably not going to be able to move and to adapt.

With the roof that was put over the farmers' market, most people think, "Okay, the roof was there for the farmers." The roof is partially there for the farmers but really it's there for parking, which they did, and it just created a second storey. I parked at the food terminal this morning, and believe me, that parking deck is just about full. You can envisage if it wasn't there, there would be no place for cars to park. So they've done that.

As I say, they've changed the road system there as late as this fall to make for a more orderly flow of traffic.

So really, things are working quite well. Who knows what the future is going to hold, but the previous boards I think have dealt quite well in meeting the problems as they've come up.

Mr Rosario Marchese (Fort York): Mr McCarthy, one of the issues that came up at the last meeting we had with the Ontario Food Terminal Board was the issue of whether or not the terminal could make a profit. The answer I got to that was that if it were to make money, the money doesn't stay necessarily with the terminal board, with the board to decide how it deals with it by way of making improvements or other things; rather, it goes back to the leaseholders.

Mr McCarthy: No, I don't believe so. I would just like to say this morning that if some of the answers are a little bit evasive, it's through lack of knowledge with what's going on. I have some perceptions but there's some material here that I've had sent to me that I think was about as thick as the Bible, and then there were a couple of pages added after that. To try to absorb that in a couple of days has been pretty hard.

I don't think there's any money that goes back to the leaseholders. The only perception might be that rather than rents being increased and increased, if they were showing a profit the rents might stay stable. But there is a debt there to be retired, so I would think that any

money that could be raised is going to be towards retiring the debt.

Mr Marchese: Now, I remember clearly—I don't know what the other members remember about that—but the money doesn't go back to the board. I thought it went back to the leaseholders; I could be wrong. Does anyone else remember that? I guess not.

Mr McCarthy: Do you mean that you pay your rent and if the food terminal's made a profit you get a rebate on your rent?

Mr Marchese: Not a rebate on the rent so much as it goes back to the people who are there, and I thought that was a strange, strange thing.

Mr McCarthy: That is not my impression.

Mr Waters: We can clear that up.

Mr Marchese: Okay, we'll clear that up, obviously, when we go there again. I was interested in your opinion on that.

1020

Mr John C. Cleary (Cornwall): Welcome to the committee. I'm sure that with what I see in your background, you'll enjoy your new challenge there.

I guess the first thing that I might like to start with: I see the losses have come down in the previous year and I understand they're at around \$69,000 now. Are you satisfied with that or would you have a goal to get that down to zero?

Mr McCarthy: I would think, trying to be a practical businessman to make a living, zero or the other side would be much better.

Mr Cleary: That would sound good to me too. I'd like to talk a little bit about capital improvements. What would you like to see there?

Mr McCarthy: I can see possibly the extension of the roof over the farmers' market to provide for more parking as one capital improvement, and I see that it has been discussed by the board in the past. There are, I believe, plans afoot too or drawings have already been made for extending the present parking deck and roof over the farmers' market.

They did try to build different types of stalls down there for leaseholders and it did not go, but there is talk about the cut flower business possibly being located to another part of the food terminal. Whether that would entitle a capital expense, I don't know. Those are the only two that I know, without more background on it.

Mr Cleary: I'd like to talk a little bit more about what a previous member has asked about non-Ontario produce. Do you feel you have competition from other residents of Ontario who sell non-Ontario produce?

Mr McCarthy: There is non-Ontario produce being sold there right now at the farmers' market. When you go into the wholesale market on the inside, it is largely imported product and I have no problem with that. I think that's the way the market was intended to be. The wholesalers would handle imported product plus any domestic product that growers wish to sell through a commission system. But the farmers' market was meant for farmers to sell their own production and not someone

to go and buy foreign product from a broker etc to make money on.

Mr Cleary: Right. What would you like to see happen there?

Mr McCarthy: I would like to see any tenant of the farmers' market only sell Ontario-produced fruit and vegetables.

Mr Cleary: Okay. In the part of Ontario that I live in, the majority of the suppliers are from Quebec. In fact, the trucks are coming in daily. What is the Ontario Food Terminal doing to encourage those companies to buy Ontario produce, or is it?

Mr McCarthy: I don't know. I think the only mandate that the food terminal board has is to provide an orderly marketplace and then it is up to the buyers to decide whether they wish to buy at that terminal. Just to make the food terminal's mandate is to provide a climate for sellers and buyers to meet and then it's just the same as yourself: If you wish to shop in one store as opposed to another, what entices you to go to store A as opposed to store B? I think their mandate is to provide that marketplace to the best of their ability and then hope that everything is suitable for buyers to come. But you get quite a few buyers from eastern Ontario; now, I don't know how far east.

Mr Cleary: I know that it's been a big issue, especially with the special licence that these companies had to get to go into the province to bring the produce back, and I understand that they're working to improve that agreement, but being a resident of Ontario, I would hope that as much of our produce is going into another province as theirs is coming into ours. It's just something that has concerned a lot of agricultural people in our area.

Another thing was that the previous speaker had talked a little bit about privatization. You said that you, in a way, would support that?

Mr McCarthy: If everything was in order. My first inclination towards most issues is that I see the private sector as being able to do a better job than the other sector. But I wish to say that I don't know all of the implications at the food terminal until I would get there and had more information. These leases are one big thing that I think would be very, very costly and might be a reason why it would not be privatized. But I mean that the thing is also the food terminal does not exist through annual grants etc or anything like that, so it is being self-sufficient as it is, so I don't think privatization there is a burning issue.

If they were taking \$1 million, say, per year that the government had to put into the food terminal to keep it operating, then I would say privatization is a burning issue. But when it is self-supporting or very, very close to it—it's self-financing—I don't think privatization would be a priority issue. I'm not saying it shouldn't be dealt with, but I don't think it's the burning issue.

Mr Cleary: Do you have any opinions on how the social contract affected the terminal?

Mr McCarthy: I don't think the social contract should be in place at the food terminal.

Mr Cleary: Is that right?

Mr McCarthy: From the fact that it is self-sustaining. I mean, it's not as though they are government employees.

Mr Alvin Curling (Scarborough North): I just want to follow up on the social contract situation. As we know, it is a good idea poorly administered, but you feel that in no way the food terminal should make any contribution towards the social contract?

Mr McCarthy: Please don't quote me as saying, "No way." I don't have the full knowledge but what limited knowledge I have of it, I don't think it should be, because the food terminal is self-sustaining; it's not operating on government money. Therefore, I don't feel that it should be under the social contract. The employees are not employees of the government of Ontario.

Mr Curling: Even that being the case, you're saying that no contribution towards savings or towards the social contract—they should not participate in any way.

Mr McCarthy: I think that issue, as I understand it, is under discussion now between the Minister of Finance and the food terminal board, but as I say, I have just come into this. I'm not on the board yet; I've never sat at a board meeting. There could be other things here that would cause me to change my mind. I'm an outsider at the moment looking in. If my appointment is approved, then I will be on the inside and will have to make a decision, but I would want more knowledge than I have right now.

Mr Curling: You're quite a seasoned farmer, I can see, and also too you have served on many, many boards.

Mr James J. Bradley (St Catharines): How can you see that? I don't know what you see there.

Mr Curling: It's all there; it's in his nails and his eyes, to say that he's a hardworking individual.

Mr McCarthy: I didn't clean them this morning or what?

Mr Curling: I can see the grip in his hand.

The present mandate, as it stands, on the food terminal, going in there as a new member, do you see any way that this mandate should change? Because as you rightly said, Ontario changes; its diversity, even its palate, its tastes, its food has changed.

Mr McCarthy: Correct.

Mr Curling: Do you think that the present mandate itself is relevant to today's demographics or today's people, today's food palates?

Mr McCarthy: I think it has been changing. I think one of the biggest problems is that the act or the legislation hasn't changed to meet some of the current problems.

1030

The Vice-Chair: Mr Jackson, do you have any questions with regard to the Ontario Food Terminal Board?

Mr Curling: Here comes a farmer now.

Mr Cameron Jackson (Burlington South): I do eat, though. I really don't have any questions other than perhaps that there is a side issue, which is in the hands of the federal government, in terms of the processing of

food into the country and whether or not it is subjected to various treatments, one which is nuclear-based and is quite controversial. I wonder if you're familiar with that process.

Mr McCarthy: No, I'm not.

Mr Jackson: Or whether or not there would be any expense associated with the food terminal and the processing or monitoring—

Mr McCarthy: I don't know very much about what you're saying. The food terminal is a marketing thing.

Mr Jackson: But it's also distribution, is it not?

Mr McCarthy: Distribution within the terminal itself.

Mr Jackson: That's correct.

Mr McCarthy: But then it's up to the individual to bring it in and others to take it out. The food terminal has no connection with that whatsoever.

The Vice-Chair: Thank you for appearing before the committee this morning, sir. There's no doubt that your appointment will be confirmed. There's never been one that hasn't, so you can feel quite comfortable in that. I wish you all the best.

GAIL ELIZABETH MISRA

Review of intended appointment, selected by the official opposition: Gail Elizabeth Misra, intended appointee as vice-chair, Ontario Labour Relations Board.

The Vice-Chair: If you have an opening statement you'd like to make, feel free to do it, or we can proceed into questions.

Ms Gail Elizabeth Misra: I don't really have an opening statement except to say that I hope I'll have the opportunity of meeting whatever your concerns are that bring me before the committee.

Mr Curling: Welcome, Ms Misra, to the committee and the challenging portfolio which they're going to put you in and you'll accept after you've been approved.

I have a concern in Ontario that the justice system itself has been in quite a mess because of the delay in people to deal with things to be just about: Ontario human rights, the courts, you name them. One of the best of them all is the Ontario Labour Relations Board, which seems to get through a little bit quicker and deals with situations much quicker than the rest, but still it's not up to par itself.

Recently, a constituent of mine was almost thrown out of work and the employer did not pay him for months. Do you see that the Ontario Labour Relations Board itself could be much more efficient in dealing with situations quicker? A letter came back from the Ontario Labour Relations Board stating, "We're not able to look at your case for another six months." I felt that if an individual who has been denied pay and has to wait six months before he can be considered—do you consider that itself, as a board? You know you're going in as a vice-chair and you may be dealing with many situations like this.

Ms Misra: As lawyers tend to do, I would start by saying I really don't know all the facts of the case so it's difficult to actually speak to the facts of the case. It may be before the board at this point, so I wouldn't want to actually say anything about that.

Speaking about delay, I think your question is good, because in discharge situations, if that is what you're speaking about, time is of the essence. I know the labour relations board had put in place last year, in January 1993, a large number of changes to its procedures to actually expedite cases so that there would be a faster track through which cases could actually proceed. My understanding is that to a large extent that has worked—much to the chagrin of the labour bar, I might add, because it actually puts lawyers in a tizzy. The board is just scheduling cases to come forward in an effort to force things on quickly.

I don't know about your specific case I'm afraid, but my view would be closer to yours, that in fact time is of the essence. I think the labour relations board has this edict, in a sense, that labour relations justice delayed is labour relations justice denied, so I think I'd agree with your concern.

Mr Curling: Specifically what I was speaking about, I used that as an example, but in general, I am saying quite a few cases like that have come to my constituency and I used that specific to emphasize, but there seem to be quite a lot of delays in this. The people who seem to have more delays and suffered more from this are those in the lower income brackets or those who can't afford the fancy lawyers who of course can do the great research and all that.

Mr Bradley: Small business people.

Mr Curling: Especially in St Catharines where all the small business people are. Isn't that so, Mr Bradley?

Do you feel the relations between employers and employees have improved?

Ms Misra: I think it would depend on the context in which you were speaking, in the general labour relations context. I've done a lot of work in grievance arbitration, in particular; I'm a litigator. My sense is actually that labour relations between employers and employees have improved at some level, and that is because they know what the rules are, both parties know what the rules are. They're also acting in the context of an economy where we are in a recession. Frankly, I think that actually encourages better labour relations rather than worse labour relations, because both parties recognize that they have an interest in maintaining the small business or the larger organization and actually making some attempts to reach accommodations.

Mr Curling: But you have not commented whether or not you think things have improved.

Ms Misra: Overall in time?

Mr Curling: Yes.

Ms Misra: I would say that things have improved. There are fewer strikes than there used to be. I think that having a labour relations regime assists parties generally in having better relations, but I can't speak to whether every employer and every group of employees actually have better relations. I think some do and some don't.

Mr Curling: I don't know how much time we have here. How much time do we have? I want to leave some time for my colleagues.

The Vice-Chair: We have about five minutes. Mr Bradley wanted part of that time.

Mr Curling: I like the other chairperson.

The Vice-Chair: You can use the amount of time you please.

Mr Bradley: I will ask some questions then. There is a perception in the business community that today the Labour Relations Board is slanted against them. I get calls from small business people who are beside themselves at the thought of having to go before the labour relations board. That's their perception. I'm not here to verify or not verify; that's a perception out there concerning business across this province in a deep recession, in tough competition.

My question is, with your background, which I looked through—it seems to be a very much pro-labour background—do you believe that you can sit impartially on this board at these hearings with your pro-labour background?

Ms Misra: I'm happy to answer this question. I actually had anticipated that this might be a concern of the committee. I should say that obviously I come from the union side of the labour bar. But the labour bar is divided completely; there is no middle ground. People either act on behalf of labour or they act on behalf of the employer.

I know that the labour relations board has attempted to make appointments from both sides. My appointment—or my potential appointment, I should say—has been made along with a woman from the employers' bar, because the board is very cognizant of the concern that you are raising that it must be seen to be impartial.

Speaking for myself, I would say that in my practice on a day-to-day basis I have to weigh the pros and cons of cases, and I tell my union clients when I do believe that they don't have a case. We actually act, in a sense, in an impartial capacity prior to a case starting all the time, because we do legal opinion letters which indicate to our clients whether or not they have a case.

Frankly, we're not just hired guns. We recognize that our parties, our clients, are actually acting in a milieu where they have a continuing relationship with the employer and it makes no real sense to take completely frivolous cases forward, for example, so you would actually tell your client. I believe that I would have the ability to be impartial because I have to weigh these issues constantly on a day-to-day basis.

The other thing is that when you're appointed to the labour relations board you take an oath which requires you to be impartial. This is not unlike taking oaths when you become a lawyer. You do take oaths which require you to hopefully fulfil certain duties, and I take that kind of oath very seriously.

1040

Mr Bradley: A business council of some kind, a business coalition representing 500 employers in the province, said that there should be a different way of appointing people to the Ontario Labour Relations Board. Do you believe that it would be beneficial to have all members of the board endorsed by both labour and

management? My understanding is that, as you have it, half the people are from the labour field and half the people are from the business field, and then when there's a chair and somebody away I guess there would be a problem. But my question is, do you think that it would be better to have all members of the labour relations board endorsed by both labour and business and then one side or the other couldn't complain?

Ms Misra: It's sort of an interesting idea. I sort of wonder how many people would actually ever get appointed to the board in that case. I actually don't know enough about what the business council is recommending so I don't know that I'm in a position to comment. I think that, as I've pointed out, there is this bifurcated bar and I wonder how it would be possible to get complete agreement from both sides. Perhaps if what you're talking about is some representative committee making some suggestions, I don't know; that might be a possibility. Right now, this is the process, I suppose, and I can only put myself into the process as it is.

Mr Bradley: They also wanted to ensure that prospective members were non-partisan. Are you non-partisan? Are you a member of any political party?

Ms Misra: I am a member of a political party. I am a member of the New Democratic Party. I haven't been active in two or three elections but I am a member.

Mr Bradley: Do you see this as a detriment or an asset or do you see it as not a factor?

Ms Misra: I don't see it as a factor at all, frankly. I don't know what other parties other people on the board may come from, but the labour relations board has certainly been seen as a very credible arbiter and has created a very good body of jurisprudence, which would suggest to me that the people who are appointed to the board and who have acted in the past, despite whatever their political party may be, clearly have taken their responsibilities very seriously, and I would take mine very seriously if I were to be appointed.

The Vice-Chair: Mr Jackson, you will be next.

Mr Bradley: Time is always so short.

The Vice-Chair: It went fast.

Mr Jackson: Do you also have jurisdiction over labour matters as they relate to employees of government ministries?

Ms Misra: There is new Crown Employees Collective Bargaining Act reform, which you may be familiar with, which has brought a fair part of the public service into the jurisdiction of the Ontario Labour Relations Board in some capacities, not for grievance settlement matters.

Mr Jackson: I guess I don't naïvely approach the notion that you do have an affiliation with a political party and that would not go unnoticed by those who promote and advance your appointment. However, there are matters; some of my constituents, for example, who do work for the government have legitimate concerns and so the notion of the independence of such an important and powerful tribunal becomes even more important, perhaps more important than other, for want of a better phrase, political appointments.

In the case that I'm currently working with in Comsoc, where the responsibility of the minister is to protect the children who are in a corrections institution, about an employee who was cleared of any charges of being rough with the children, we have a situation where an employee has been nine months sitting at home because the ministry can't make up its mind whether or not it's there to help the employee get back to work when the police have cleared him or whether its mandate is to protect the children, who are its wards as well.

I've never really come across a case like this, but I recommended that the matter be brought to the attention of your board. There will be some political pressures put there, I'm sure, that my constituent, whose legitimate labour grievance against the employer, Mr Silipo, should be taken seriously. But I wonder to what extent the political will of the board would be to wrestle with the government in such a direct fashion. That's of concern to me because this individual's been cleared by all of his supervisors; everybody. It's been sitting on the minister's desk for nine months; meanwhile this employee's sitting at home and his reputation is being further besmirched, and it's unfair to an employee in the province of Ontario.

Ms Misra: I think you're asking two things. I'm not quite sure, but my sense is the first thing that you're asking me is about what one should consider happening in this particular case and the other is also about the credibility of the board and whether or not people belonging to political parties before they ever get on the board is a concern for the credibility of a board.

Mr Jackson: No. I do not expect you to comment on the case since I've just simply set it out in very terse terms. No, no. What I'm suggesting to you is I have identified a serious political issue within a ministry where the victim is the employee and there seems to be no desire to resolve this. You are an opportunity to resolve these matters. That is the reason for the existence of the board in its broadly based terms of reference and it comes down to a point of pressure.

This is only one employee. It could happen that there are larger questions of any government which promotes in this area in a less-than-arm's-length fashion. I don't want to second-guess that part of the process; I'm just saying that there are occasions when it becomes—I'm asking you the extent of your independence and your political will to meet those kinds of forces that may confront you, because these tribunals, although on paper are independent, are not necessarily always independent. They are political creatures.

Ms Misra: I'm not quite sure how to answer your question because I actually think this is not within the jurisdiction of the labour relations board. What you're looking at is a question of whether the employer is going to put an employee back to work once, I presume, the Grievance Settlement Board, actually, and not the Ontario Labour Relations Board, has ruled in the employee's favour and has said that the employee should return to work. My sense is that this is actually not something I would have any jurisdiction, if I were appointed to the board, to deal with.

I think, however, your other point may be, do I have

the political will to actually make the difficult decisions? I would say yes. In fact, the labour relations board would have to; its legal jurisdiction requires it to look in an objective and neutral fashion at every question and just decide based on the merits of the case, and it will make no difference whatsoever whether the employer is the government of Ontario or whether the employer is the small business person in St Catharines.

Mr Jackson: I hope so.

Ms Harrington: I see by some of your background here that you've been involved with the health care sector. How do you feel your background will relate to some of the changes we see happening now? I think the board may possibly be dealing with more white-collar, professional-type cases. Can you maybe expand on how you view your background as related to what's ahead for the board?

Ms Misra: My sense is that since there were changes made last year to the Labour Relations Act as a result of Bill 40, a number of new groups would be able to organize and that includes lawyers, as a matter of fact, and other white-collar professional types who are going to be in a position to actually organize themselves and, I guess, once certified may have issues which come before the board.

My experience has been with doctors, with pharmacists, with people who are registered nursing assistants, health care aides, a fair variety of people in the health care field specifically, which you were speaking about, but also college faculty associations and university faculty associations. All of those people have something in common with other white-collar workers, and I believe I would just bring that background to the board. We will be seeing at the board, should I be appointed, more of those people bringing their issues.

They are different than the construction industry, for example, and they are also different than the industrial sector. I think an appreciation for their special kinds of ways of dealing will be of assistance to the board. I hope my experience will be of assistance.

1050

Ms Harrington: Certainly in the last year, since January 1993, since Bill 40 has been in effect, there have been some changes. Would you like to comment on how you see that has changed the role of the OLRB?

Ms Misra: I think I can say for a start that it's made it very busy. I gather that certification applications alone are up by 68% in the last year. So there's clearly much more activity at the board. As you probably are aware, there are many other areas which are covered by the amendments to the legislation. That included the strike-related provisions which mean replacement worker questions would be coming before the board, although clearly there haven't been that many strikes in the last year in Ontario. In fact, I don't think there's been a whole lot of activity in that area.

The area where perhaps there's been the most activity as well is in interim applications, because the amendments allowed for dealing with a concern which was raised actually by the Liberals on this panel, and that is

how quickly matters get heard. Being able to make interim application so that if someone is fired in the course of organizing they can come before the board on very short notice and can be dealt with, and either they get put back to work or they don't, has meant that the work of the board has increased substantially.

I see those kinds of issues continuing into the next year, except that now we also have the sector reforms which will bring more work before the board also.

Ms Harrington: I think over all what I've heard you say in the last half an hour is that with the labour relations changes, there is a clarification which in fact is helping both the board and the employees and employers to resolve some of the issues.

Ms Misra: That is my sense. I actually think that, especially the procedural changes that were made within the board in the last year, could do nothing except assist all of the parties because it does get employees, unions and their employers to resolve their issues as quickly as is possible given that there are limited resources and the board can only hear so many cases at any time. Clearly the fast-tracking has worked, I think.

Mr Waters: I just find it's interesting. I know when I supported Bill 40—it was the rules before—as a person who worked within the system, there wasn't a fairness. Because you don't have strikebreakers, or replacement workers I guess is the polite term for them, now that you don't have that, would you find that you're having more mediation and that type of thing, because I guess the businesses shut down; they don't have this opportunity. Now they would be in mediation trying to resolve it beforehand or earlier on.

Ms Misra: I'm a bit loath to actually address this. I'm not quite sure that I know the answer. I would imagine that you are correct, that in fact it leads to more mediation. Frankly I can't tell you in any statistical terms whether that is in fact what has happened. But I think you're right that once you clarify a regime and people know what they have to do and they know what the consequences are, both sides, they have to address themselves to the issue before they get to the breaking point. I would imagine that you're right.

Mr Waters: I guess one of the other things that affects the OLRB, as well as labour in general, is—I was looking through some of the background notes—the increase in women in the workforce. I believe I read somewhere where up to 40% of the labour force is now women. I guess there's a whole different group of principles and different needs to be dealt with out there that the board would have to deal with and evolve in some way in order to deal with that.

Ms Misra: I think that's true. I think that may be—I'm presuming to know because I actually don't know—a reason that the Ontario Labour Relations Board has moved in the direction of having more women vice-chairs, because clearly there are large parts of the service sector which have organized in the last while. That is where women are disproportionately represented. So I think it is important for labour relations contacts in general to recognize that having such an infusion of women into the labour force does make a difference. We

do have to be cognizant of their special needs as well.

The Vice-Chair: Thank you for coming and I wish you well in your endeavour.

SHANTHI RADCLIFFE

Review of intended appointment, selected by the third party: Shanthi Radcliffe, intended appointee as member, Council of the Ontario College of Pharmacists.

The Vice-Chair: Our next intended appointee is Shanthi Radcliffe, the Council of the Ontario College of Pharmacists.

Ms Shanthi Radcliffe: I would just like to say that I'm pleased to be here. Thank you for inviting me. I look forward perhaps to serving on this council.

Mr Jackson: Ms Radcliffe, could you tell us how you came to make the application, who advised you or who promoted your application?

Ms Radcliffe: Actually, I didn't apply specifically for this council. I had expressed a willingness to serve and I was approached by the ministry, I believe because of my background and involvement in the health area. Would you like me to say more about the involvement?

Mr Jackson: No, I wanted to pursue more how comfortable a fit you are in this appointment as compared to, say, others in the health field. Can you talk to us specifically about the college of pharmacy?

Ms Radcliffe: My involvement has been as the director of a community health centre. We have as one of our prime focuses health promotion and health education. We deal only with targeted populations, mostly of the disadvantaged. The community health centre in particular started as a seniors' centre. So I have a long-standing interest in issues that regard seniors.

I also served at one point for a year as a member of the complaints task force of the College of Physicians and Surgeons, and that gave me some experience with how colleges work and some of the issues involved in regulated health professions.

Mr Jackson: When it comes to health services for seniors, overmedication is a serious problem, as you well know.

Ms Radcliffe: That's right.

Mr Jackson: To what extent do you believe that your participation at the college will help address this issue?

Ms Radcliffe: I think what I would bring is a consumer viewpoint. One of the things we try to do at the community health centre is look at issues dealing with seniors in the round, as a whole, looking at the various forces that impact on seniors' lives and trying to address them by other than chemical means. So I think I bring a consumer focus to issues regarding seniors and drug benefits. We know about their living conditions, the kinds of pressures that are on seniors, the kinds of deficits that they live under. I think that kind of public accountability, that kind of consumer focus, is something that I can possibly bring to the council.

Mr Jackson: When there are disciplinary matters with pharmacists, some of the complaints with pharmacists are inappropriate dispensing, but also overdispensing. Are those the kinds of areas that you're talking about bringing

your consumer focus to in terms of the disciplinary actions?

Ms Radcliffe: I think so, yes. I'm not well versed enough to answer specifically. I do know from my involvement with the College of Physicians and Surgeons that some of the problems related to a cumbersome process, lack of timeliness, all these are being worked with. I would like to be able to look at some of the problems that specifically face this profession, but I think a consumer analysis is vital, yes.

Mr Jackson: What are your views on the recent concerns expressed about dispensing through the mail?

Ms Radcliffe: I wonder about the lack of patient confidentiality in the process. I feel that if drugs are dispensed, they must always be accompanied, where possible, with some measure of counselling so that people who accept these drugs are aware of alternative methods of treatment and so on; so lack of confidentiality, lack of counselling.

1100

Mr Jackson: The strength in the argument is you save money. But you have to give up some of the aspects of control, choice and confidentiality.

Ms Radcliffe: That's right.

Mr Jackson: I appreciate your response to that.

Ms Harrington: I see that the particular council that you've been appointed to has six public members and six professional members. How do you see your role as a public member of that panel?

Ms Radcliffe: Bringing the consumer focus to it; I am not a member of the profession, and to be frank I have a great deal to learn, and that's one of the challenges for me about the pharmaceutical profession and pharmacists. I think it could be an advantage to come in with a fresh mind. I've dealt with other branches of the health profession: physicians, nurses, health promoters and so on. But that's what I would see as my value.

Ms Harrington: I certainly hope that you would speak up for the public, and I do see that as your role.

Ms Radcliffe: I think often it's easier for us to see the wood than for many to see the trees, if they're really part of the profession.

Ms Harrington: The two issues that I think are probably going to be at the top of the list for pharmacists are the lack of sale of tobacco in pharmacies and the one we just talked about, the mail order prescription, which you've clearly outlined your position on. How do you feel you're going to be able to deal with the issue of tobacco sales?

Ms Radcliffe: I think it's part of an even broader problem; if you like, an issue. I'm very fresh to this whole field, you understand. But I would say that there is an issue regarding whether the pharmacists are part of a health discipline or whether they're part of a business enterprise. I believe the tobacco sales are part of it. One of the issues that I think will surface is whether in fact pharmacies can be economically viable if tobacco is removed from the shelves.

Looking at it from the broader health context, I see all

kinds of changes coming with shrinking resources, with the appropriate auditing of what we have to their particular purpose. I think pharmacists are part of that wider process. Are pharmacists business people dispensing pills or are they in fact a health discipline and have other responsibilities as well to the public? So I think tobacco sales are part of that. It needs to be seen in a wider health context, both as an industry and as individuals practising in the industry.

Ms Harrington: I see. I think quite often they've been seen as both. So they'll have to decide.

Ms Radcliffe: That's right.

Ms Jenny Carter (Peterborough): I'd like to return to the question of mail-order as opposed to pharmacists. I understand that there is quite strong competition between pharmacists at the moment and that maybe some might get shaken out, especially if there is competition from mail order. But my pharmacists at home tell me that they have a great deal to offer. Because they do see the patient, they can assess the appropriateness of the medication. I know that they have a form that they can fill in to dispute what a prescription is saying or they can call a physician and challenge that.

You raised the question of confidentiality, but there is now an on-line computer system whereby any pharmacy can call up that person's history as to what medications they've already received. Would you find that a problem as regards confidentiality or would you say this is something that strengthens the position of the pharmacist to help the customer?

Ms Radcliffe: I would hope that kind of system, which I know is developing everywhere, would not operate without safeguards. I think the confidentiality should be a primary issue. I didn't quite understand the first part. Were you saying that the mail order pharmacies did in fact do some counselling and could in fact be responsive to patient concerns?

Ms Carter: I think they could obviously have access to the computer, but they wouldn't have the advantage—

Ms Radcliffe: That's right, of the onsite.

Ms Carter: —of having the person in front of them. I think sometimes just to see the person can trigger alarm bells, or to be able to exchange a few words with them on the spot before the dispensing takes place.

Ms Radcliffe: I would think so. That's our experience with seniors. We've often had people come in and say that they do in fact feel they're overmedicated. They will go into a pharmacist and talk about it. We do annual drug reviews with what's there and consult with the pharmacist about what is and isn't necessary, and I think that's crucial. So it would be a real concern to me that people would be able to get mail order drugs without that kind of human contact, advice, direction.

Ms Carter: I think pharmacists themselves are taking this line that they would like to do more counselling of clients, and maybe that's something that should be encouraged.

Ms Radcliffe: I would think so, yes.

Ms Carter: There's also the problem that the public

have. There seems to be a perception that dispensing fees are too high. People say, "Oh, they just wrap pills in a piece of paper and get a flat rate for it regardless of whether they have to do anything." What would your comment on that be?

Ms Radcliffe: I would need to know more about how the industry operates, but there is so much scrutiny these days about how professions are paid, the relative skills that are needed, how we assess them, where we cut down the use of professional expertise when it really isn't necessary. I think there are so many issues related to that, and I would have an interest in looking at the costs that are associated. In the community health movement, it's a primary interest at this point.

The Vice-Chair: Mr Waters, did you have any questions?

Mr Waters: No, I had nothing.

The Vice-Chair: Fine. I want to thank you for appearing before the committee.

Interjections.

Mr Waters: What about the Liberals?

The Vice-Chair: Oh, just on behalf of the government side. Now I will move to the opposition.

Mr Bradley: I have a few questions on your opinions on certain things. First of all, the present government was embarking upon a course of action which would have seen senior citizens pay for some of their drugs or have certain drugs delisted, and I think the government has now retreated from that position.

Mr Curling: Came to their senses, more or less.

Mr Bradley: The government members may help me out on that. I think they retreated from that position. Do you believe that in fact seniors should be paying for their drugs and that certain drugs that have been covered in the past should be delisted for the purposes of having the government pay for them?

Ms Radcliffe: I'm going to get to the answer to your question, but I have come some way in my thinking about a two-tier health system where some services and products are publicly financed and some are privately. I was very much, until fairly recently, on the side of, "Let's not touch our wonderful system at all."

1110

Mr Bradley: I recall that, because when we had Liberal and Conservative governments in power, any thought of it was simply totally unacceptable to everyone. But recently it's even gaining some favour with the NDP members.

Mr Jackson: It just doesn't work without violins.

Mr Bradley: It's even gained some sympathy with NDP members. Sorry, go ahead.

Ms Radcliffe: I still feel that, in principle. I don't know about the sustainability of it. I have an interest in health systems and how they operate. I think in general the European countries are finding innovative ways of managing things, if that's the word I want.

I don't know whether the system is sustainable the way it is. I think we all certainly have to look at it. I think the time is coming when we have to make some very hard

choices. I think there are ethical choices there and there are financial choices. I would hope that the ethical choices are made before the financial ones.

All this is leading up to some kind of an answer. Basically the answer is, I'm sitting on the fence.

Mr Donald Abel (Wentworth North): That's a good answer.

Mr Jackson: You have an open mind.

We're the most overmedicated society on the face of the earth. That's our problem.

Ms Radcliffe: I think that is true.

Mr Jackson: It's not who pays for it; we're just getting too much of it.

Ms Radcliffe: I don't know if you've seen the Globe and Mail this morning, but there's something on the initiative on colds and flu which was based out of my health centre.

Mr Curling: Dr Grier made some comments, yes.

Ms Radcliffe: That came out of my health centre.

Mr Bradley: I would love to have seen the coverage of that had a previous government done it.

You see yourself as a consumer representative, which you are, on the board. With whom will you be consulting so that you can present that point of view? The Consumers' Association of Canada, or Dr Rachlis? Whom will you be consulting with before you bring those views to the board?

Ms Radcliffe: I think that would largely depend on the issue. I've been around 20 years in the field and I do have a network that I'm comfortable with; it's diverse. I would certainly look to the community health movement and our principles for some of the answers, and depending on the issue I would go from there.

Mr Bradley: Do you have any ideas about the disposal of unused drugs? For instance, when a person dies, particularly an elderly person, there's often a pharmacy sitting there at home and those drugs have to be disposed of, or when somebody gets better, I guess, and doesn't need these drugs any more. Do you have any ideas what might be done with those drugs?

Ms Radcliffe: Throw them in the garbage.

Mr Curling: They send them to Third World countries, don't they?

Ms Radcliffe: Yes, they do.

Mr Bradley: The problem is that if they went in the garbage somebody could pull them out and use them. Do you think that somebody should be developing a method of disposing of those safely?

Ms Radcliffe: I think so, yes. In our health centre we bring our seniors in annually with everything they have in a paper bag and look at things that are outdated, unnecessary, whatever. Yes, I do think we should have some guidelines on that.

Mr Bradley: It used to be in Ontario that you could not have persons identify themselves as to any personal information. The agencies, boards and commissions application for appointment now calls for a candidate profile where you must say whether you are a member of

the first nations, aboriginal peoples or Metis, "Are you a member of a visible minority? Is French the first language you learned and still speak? Are you a person with a disability? Are you male or female?" Did you resent having to fill that out?

Ms Radcliffe: Yes, I did. In general, I refuse appointments that I think are offered to me because of my colour. I like to be appointed for things that I have had some control over and some input into, and though I wouldn't change my colour, I didn't ask to be the colour I am.

But I also think there's a problem, and I don't know that it's only Canadian, that we're looking at ways of dividing ourselves up. It concerns me that nobody is thinking in terms of what we have in common but rather what we have apart. Now, that's not to say that I don't think that the groups you mentioned have not had a difficult time. I believe in equity. But I think the solutions are much longer-term and much more expensive and need much more thought than the way it's being done right now.

Mr Curling: Let me just follow up on that. I think that you answered very well. I really appreciate almost all the answers that you have given, so well thought through and so honest. I think the role you can play too is important. I saw in one of the sections there that the role is to develop, establish and maintain standards of qualifications for persons to be issued certificates of registration. What they have seen in many of the professions in Ontario is that visible minorities and women, the studies have shown, have been shut out. This has been done very much so in the professional organizations which control all this. The role that you can play here is not because you're a woman and not because you're a visible minority or what the case would be but because of your sensitivity in some of the answers that you have said there. Do you think you can bring to that and vigilantly monitor the fact of who is being certified to be pharmacists and who are given certificates? Because somehow it's not being done. Do you see yourself playing a role like that?

Ms Radcliffe: Absolutely. I have been president of the Multicultural Health Coalition of Ontario. I'm vice-president of the Canadian Council on Multicultural Health. The status of newcomers to this country is of great concern to me.

Mr Jackson: Newcomers as professionals?

Ms Radcliffe: As professionals as well, but the status overall of people who come into this country. I think we're tremendously humane. I think we're getting in people with very high qualifications. I don't think we have put enough thought into making use of the talents

we are bringing in. I appreciate what you're saying. I think we need to open those parts, because I think we are getting the talent, but we haven't thought through how we use the talent. What I see where I am sitting is a lot of frustration, a lot of anger, which is a great shame, combined with the fact that they know that this is a great country, but feeling a sense of betrayal. Certainly that would be of great concern to me.

Mr Curling: Well said. Regardless if we bring in legislation, calling it employment equity or whatever the case would be, on the parochial or on the local level, as you said, those who've got the merit and those who have the qualifications still don't find an opening.

Ms Radcliffe: Absolutely.

Mr Curling: I just want to be kind of local or parochial about this. The pharmacists have said, "There's an opportunity," and I'm not only addressing the pharmaceutical industry. So are the doctors, so are the engineers, so are all these other people, and that role is of great importance too.

Ms Radcliffe: To me, yes.

Mr Curling: In other words, the diversity we have of culture and the people who respond to certain drugs and all that, they've got to be quite a challenge to your group here. Whom do you accept within here and what drugs or what have you? Do you see that as one of the greater challenges we have in Ontario, because of the growth? In my constituency, at one stage just about four years ago, the English population was 66% and the Chinese was about 16%. Today, it's 39% English and 36% Chinese. So coming from the language to the medicine or so, do you see that as one of the challenges of what we accept in the pharmaceutical area?

Ms Radcliffe: Absolutely. That's about the way the proportions are changing and the challenges are coming forward. I agree with you.

Mr Curling: I have no other questions. I want to thank you very much for coming before us. Good luck.

The Vice-Chair: We want to thank you and wish you all the best.

Ms Radcliffe: Thank you. I have enjoyed it.

The Vice-Chair: Is it the wish of the committee that we deal with the appointments we've reviewed this morning? If so, we would entertain a motion.

Mr Waters: So moved, that we deal with them as one unit.

The Vice-Chair: Is there any discussion? If not, all those in favour of the motion? Opposed, if any? The motion is carried.

The committee adjourned at 1120.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Chair / Président: Marland, Margaret (Mississauga South/-Sud PC)

***Vice-Chair / Vice-Président:** McLean, Allan K. (Simcoe East/-Est PC)

***Bradley, James J.** (St Catharines L)

***Carter, Jenny** (Peterborough ND)

***Cleary, John C.** (Cornwall L)

***Curling, Alvin** (Scarborough North/-Nord L)

 Frankford, Robert (Scarborough East/-Est ND)

***Harrington, Margaret H.** (Niagara Falls ND)

 Mammoliti, George (Yorkview ND)

***Marchese, Rosario** (Fort York ND)

***Waters, Daniel** (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)

 Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Abel, Donald (Wentworth North/-Nord ND) for Mr Mammoliti

Jackson, Cameron (Burlington South/-Sud PC) for Mrs Marland

Clerk / Greffière: Mellor, Lynn

Staff / Personnel: Yeager, Lewis, research officer, Legislative Research Service



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Mercredi 26 janvier 1994

Standing committee on government agencies

Ontario Food Terminal Board

Comité permanent des organismes gouvernementaux

Commission du Marché des produits
alimentaires de l'Ontario

Chair: Margaret Marland
Clerk: Lynn Mellor

Présidente : Margaret Marland
Greffière : Lynn Mellor



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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 26 January 1994

The committee met at 1021 in the Superior Room, Macdonald Block, Toronto.

ONTARIO FOOD TERMINAL BOARD

The Chair (Mrs Margaret Marland): Good morning. We're going to continue the review of the operations of the Ontario Food Terminal. I understand that the committee toured the terminal yesterday in my absence in Ottawa, while I was attending the hearings into Bill 120.

I'd like to welcome the representatives of the board this morning. I hear you've come by sleigh from Hamilton, Mr Ireland; is that right?

Mr Gary Ireland: Actually, west of Hamilton, and I thought that Hamilton would be the only trouble spot this morning so I drove around Hamilton and I never had a problem till I got to Mississauga and it took me three times as long once I got there. I apologize for being late. An hour-and-a-half drive took me three hours this morning.

Mr Rosario Marchese (Fort York): Just got to abolish Mississauga.

The Chair: We just won't tell Hazel.

Does the committee wish to start with questions following your visit yesterday? All right.

Mr Allan K. McLean (Simcoe East): I wondered if the group had any further input that it wanted to make with regard to our visit yesterday. I'm not so sure that they had, but I'm curious if there's anything.

Mr Ireland: The one comment I'd like to make is that there was certainly a concern that was expressed at the initial meeting we had in December and it was raised again yesterday at our preliminary meeting in the office regarding the effect of what we're trying to do as far as the origin of product in the farmers' market, particularly as it relates to NAFTA, and I guess GATT as well. We tried to address that concern, which I felt we did, and I'm just wondering whether after walking around the market and seeing the situation and the product that was there, what we were able to see yesterday, whether that concern had been satisfied or not.

Mr McLean: I had a question on that very issue, if I may proceed with it. You talked about the amount of produce that's coming in, probably from California or from other countries. What is our saw-off? Do we export more than we import? Do we import more oranges, and what is our export? Do we export fruit to the States or to other countries?

Mr Ireland: Yes, we do, some commodities. I have to say we import more than we export, no question.

Mr McLean: What is our trade deficit on produce? About \$600 million worth?

Mr C.E. Carsley: I haven't got really hard facts on this, Mr McLean, but I would say it's probably in excess of a billion and a half dollars. That's what our deficit is, because don't forget, things like citrus, bananas, are huge

markets throughout Canada. I'm talking Canada when I say those numbers. So I would suggest that even though there's lots of stuff exported from Bradford—lots of apples, particularly processing apples—to the States, things like potatoes as well, really it's a large deficit in terms of our trade in produce.

Mr McLean: Is the inspection done here or is it done where it originates from? I'm really thinking about insecticides and chemicals that may be used in other countries compared to our country here.

Mr Carsley: I certainly am not an expert on inspection at all. I think that was addressed a little bit yesterday. The produce is inspected on a spot basis at the border, but the main inspection, I guess, takes place on a random basis by the Ministry of Agriculture and Food in Ontario and Ag Canada. That's as much as I can really say. They were indicating yesterday, of course, that they do it on a sampling basis.

Mr McLean: Does Ag Canada visit the original countries? I'm thinking of California, because I think that's where a lot of our produce comes from.

Mr Carsley: That's right, it does.

Mr McLean: Do they have an agreement with the US with regard to inspecting at random at the growers?

Mr Carsley: I can't comment on that; I'm sorry. Maybe someone else would be able to.

Mr Ireland: Not that I'm aware of. Right now we've got a situation where we're trying to sort out phytosanitary regulations in order to get product into Mexico as a result of NAFTA, and we're having a heck of a time. I know in our industry, the one I'm involved in, the apple industry, we had Mexican officials up here over a year ago. They're going to be coming up here again and we're still trying to get through the red tape in order to move product down there.

Mr McLean: You indicated yesterday that there are around 1,100 jobs at the food terminal. Has that increased or has that held pretty well the same?

Mr Carsley: Over the course of the last five to seven years it's probably held pretty much the same.

Mr Bill Murdoch (Grey-Owen Sound): I had three concerns. My first concern is whether there would be any products there from Grey county, and we solved that problem when we found the apples from Clarksburg and Thornbury. That was one concern I had and it was solved. Then the second one is something Al was talking about, the inspection, and then when I found out one of the inspectors is from Grey county I figured everything must be going pretty good there. So I got two problems solved.

I guess the third one, though, and you people mentioned it, and maybe you can help us out now, is the farmers' market and how do we keep Ontario produce there, in the farmers' market part, the outside one. You

asked us for some help. Maybe you'd better elaborate on that. How do we give the board that power you need to make sure that Ontario produce stays out there? We didn't really elaborate on that, because I don't know what you want us to do now. Maybe you'd better tell us what we've got to do as the legislators to help you out.

Mr Ireland: I guess our best option would be to get a change in the act to give us the power to be able to designate what's going to be in the farmers' market. Right now we don't have that authority, that power to be able to do that.

Mr Murdoch: You'd better tell us, then, what you'd like to see changed in the act, someone, either the government or one of the other two parties. Your solicitor would have to tell us, and especially the government, anyway, and it would have to bring in an amendment to the act. I guess your solicitor should tell someone over there what you'd like done, then we'd debate it in the House and whatever. But unless you probably give us the details and push it a little harder, then maybe nothing's going to be done.

Mr Carsley: We do have our solicitor here. Perhaps he'd like to comment on that. We've had a number of drafts of our act over the last seven to eight years that take into account this situation, so that work has all been done. All we have to do is present the act to you the politicians and maybe you could see your way clear to revise it.

Mr Murdoch: You have to get the government to listen to you. That's why we're here, to listen, I guess. I don't know whether the government of the day has turned you down or not, because it hasn't come forward. We on this side of the table don't get a chance to bring in amendments; it would be the government.

Mr Carsley: Our minister, and I don't think I'm talking out of turn here, is very supportive. He wants to try and help us.

Mr Murdoch: The Minister of Agriculture and Food.

Mr Carsley: Yes, Mr Buchanan.

Mr Murdoch: I'm sure he would be. I've had no problems with him and I'm sure that's where you would go, but we have the bureaucrats we have to deal with also.

Mr Alvin Curling (Scarborough North): They're okay, the bureaucrats.

Mr Murdoch: Are they? Alvin says they're okay.

Interjections.

Mr Murdoch: We've missed the Liberals?

The Chair: Mr Villeneuve wanted to speak, and I'm doing it 20 minutes by caucus.

Mr Curling: Sorry.

1030

Mr William Northcote: I didn't have an awful lot to add, other than to say that in fact a number of drafts have been done over the last few years. They're ready, willing and able to go. I thought that if there was an all-party consensus on the matter, this matter being important, this would be of great assistance.

Mr Noble Villeneuve (S-D-G & East Grenville):

Further to my colleague from Grey-Owen Sound's question, the board is being challenged by people who bring produce in from the US, wherever. The vast majority of the produce comes from the US or other countries. What's the challenge? I've got some problems. Is it identifying Ontario-Canadian produce? What we saw there yesterday was 85% non-Canadian produce, I would say.

Mr Ireland: But all you saw, Mr Villeneuve, was the wholesale unit. We didn't see anything out in the farmers' market. If you would have gone there this morning or when the farmers' market is active, the majority of it is Ontario. But the inside market where we were yesterday, in two or three of them, as you mentioned, you have a difficult time finding any Canadian product at all.

Mr Villeneuve: Okay, so what we're dealing with is the farmers' market area and identifying that indeed it is Ontario or Canadian farmers who are there as opposed to an Ontario farmer wholesaling produce that was grown outside of Ontario, I gather. If we are able to accommodate you there, is there a downside to the whole market area or to Canadian and Ontario producers? There's got to be two sides to the story.

Mr Carsley: We don't feel that there's a downside; we feel it will in fact over time be more of a benefit to the market than having a real downside, in that the farmers' market has always been a place where growers could come.

We have daily growers who pay a fee and come in every day. They've never been turned down. They're not actual tenants, but anybody who is a legitimate grower in Ontario can come into the terminal. If something isn't done, the real downside is—and I think Mr Wilson can comment on this better than I can—that the farmers' market will become a dumping ground.

In other words, if we don't get some sort of a change in our act to give us the power to control what's sold there, then eventually it will get out of hand and product from, say, other provinces or from the States, Mexico, could end up coming in on the basis of it being a final home for this product. It'll end up being a dumping ground and thus prices would be destroyed, daily growers would have difficulty trying to compete in that sort of setup and so would the other Ontario growers who are regular tenants of the market.

Mr Villeneuve: Okay. Would this stop Mr Wilson, Mr Ireland, who are very legitimate producers, from selling Idaho potatoes or something when they're out of season? I guess that's a poor example. Would it stop them as very legitimate Ontario growers from going to their spot in the market and selling produce that is from elsewhere than Ontario?

That's the area I have some problems with. We have a growing season of 130 days here in Ontario and for the rest of the year for fresh produce, it's got to come from elsewhere. That's my concern.

Mr Jeff Wilson: I think we have to look at it from two fronts because you've raised the issue of me as a farmer—am I a farmer or am I a marketer? We're certainly finding out that very few people out there can

be the be-all and end-all within any sector, whether it's agriculture, manufacturing or what have you.

What we're finding is that in fact we do have year-round production on things like potatoes, like onions, like apples and a number of the fruits, whereas the salad crops are obviously out of season. But the question then becomes, whose interests are we serving? I should remind the committee that the Ontario Fruit and Vegetable Growers' Association is taking a very strong stand on this issue. They represent the 10,000-plus growers out there who are generating the \$660 million of fruit and vegetable production in the province. They see a definitive threat to the livelihood of those producers, especially in the context that we have a very good initiative under the Foodland Ontario auspices to promote Ontario-grown product. We feel that also would be threatened, because a wholesaler or retailer buying in the farmers' market currently is assuming that it's locally grown product. So to a degree there's some misleading aspect to the issue as well.

Mr Villeneuve: What I don't want to do is have a legitimate producer be restricted from continuing to serve the market that he serves over 12 months. Will that give the Ontario terminal executive the power to decide who's a legitimate producer and who isn't?

Mr Jeff Wilson: No, it would give the Ontario terminal board the authority to regulate what goes on in the farmers' market so it remains an Ontario farmers' market, not an Ontario wholesalers' market.

Mr Villeneuve: Then that would make it easier for you to deal with the challenges that are coming from the people who are in that farmers' market area under false pretences?

Mr Jeff Wilson: Definitely. It allows me as a farmer to compete on a quality basis, on a competitive basis.

I'll tell you right up front, I can't compete against dumping from out of province. I'd be kidding myself to sit here, and I think we'd all be doing ourselves a disservice to assume that when low-ball, low-priced product comes in because there is no other market for it and it ends up on that farmers' market, that I who believe in orderly marketing and am trying to make a living from this can compete against that.

Mr Villeneuve: Okay. What we saw yesterday, by and large, outside of the farmers' market area, which was vacant at 2:30 yesterday afternoon, has nothing to do with this legislation.

Mr Jeff Wilson: No.

Mr Villeneuve: Okay. You've straightened me up a little bit.

Mr Ireland: Mr Villeneuve, if I could just add to what Jeff is saying, the grower-dealers, or the dealers that want to bring in product from outside of Ontario, use your very argument. They say: "Well, we've built up a clientele, we've built up our customers. We want to service these customers, so when our Ontario product is not in season, we can complement that with out-of-season. Once ours comes on stream, then we stop that." But it's only an excuse, and it doesn't work that way.

Mr Villeneuve: Okay. Thank you for clarifying.

Mr Jeff Wilson: I think one final comment should be made. I think the committee was aware, but we tried to accommodate that type of individual when we looked at expanding the market, and there was an interest in participating and expanding the market to accommodate more out-of-province type production.

Mr Murdoch: Just to carry on, do you have any reason why it hasn't been brought forward?

Mr Ireland: You mean as far as a change in the act?

Mr Murdoch: Yes.

Mr Ireland: We initially spoke with the minister and the deputy. We had a meeting with them approximately a year ago. The feeling at that time was that there was such a backlog in the Legislature that to bring forward a change in the act would be a long process and debate. We felt that we could possibly deal with it with a change in the regulations, which we had attempted to do, but we just couldn't seem to get the right wording. It didn't matter how we worded it; it was still going to be challenged.

It just appears right now that it's not a viable option. It's kind of a weak way around trying to solve the problem. Obviously the proper way to do it would be to get a change in the act so that it would give us a kind of cut-and-dried policy that we could deal with.

Mr Murdoch: Okay. There are people here from the ministry, so maybe we'll get some action.

Mr McLean: I have a final question, Madam Chair, and it's simple. What's the makeup of your board? You're the chairman. How many are on the board?

Mr Ireland: The board is made up of seven individuals. Jeff is a producer rep from the farmers' market. We have a wholesale rep from the inside market, which you saw yesterday. Helen Lahti would be classified as the consumer.

Mr Carsley: Yes, from the public.

Mr Ireland: Diane Baltaz is a similar situation as Helen. We have Grace Dekker, who is a flower producer from the farmers' market. Cameron Rundle is a grower-buyer on the farmers' market as well.

1040

Mr McLean: How come there are only the three farm reps? They were there yesterday. Three farm reps are here today. How come none of these other people want to take part in these hearings?

Mr Ireland: They do. Harold Brown, our wholesale rep, was at our meeting in December. Unfortunately, he's out of the country. If he'd been anywhere in North America, we'd have flown him back for this meeting yesterday and today, which we did with Jeff last week when we had a meeting because he was in Montreal. Diane is on the east coast and Cameron is very sick. In fact, he was taken to the hospital; otherwise he would have been here too. No, they're very interested. In fact, I think at their initial meeting in December, everybody attended. To my understanding, though, the previous sessions with the standing committee, that had not happened.

Mr Marchese: First of all, I just want to thank you

for the tour that you gave us yesterday. We found it very useful. When one sees the operation, visually at least, it helps a lot more than having to abstract about what is there. So I found it very useful. I wanted to tell you that.

Some quick questions before I get to the whole issue of changing the act and how we do that and why we would do that. My first question has to do with a statistic that I saw in your notes yesterday. Approximately 20% of the produce grown in Ontario destined for the fresh market goes through the terminal. I thought it was higher. Does that mean the other percentage of course goes through the different markets that we have around Ontario? Is that the answer?

Mr Jeff Wilson: I could answer that probably best. As an Ontario producer, probably 30% of my personal production is sold right at the food terminal, but I live up north of Guelph, in Wellington county. There's quite a market up there and west dealing with local independent stores, chain stores. So we operate on two fronts: at the wholesale market in Toronto and servicing probably a 50-mile radius of our home town. We're probably somewhat definitive of an average producer out there in trying to utilize all the marketplaces we can.

Mr Villeneuve: Pick-your-own as well.

Mr Marchese: Sure. Oh, of course, right. I just thought it was higher as a statistic.

Mr Jeff Wilson: That still translates to somewhere in the neighbourhood of \$180 million of Ontario produce sold at the food terminal, so it's still a significant amount of production.

Mr Marchese: Sure. On the revenue-producing cost centres, do you have a breakdown of what each cost centre makes by way of revenue? If you do, could you provide that to us?

Mr Carsley: Yes, we have that. We could provide it.

Mr Marchese: I'd appreciate that, so we have a better sense in terms of the picture: where we make money, where we don't.

Mr Carsley: Absolutely. We can provide that for you. One thing that should be pointed out is that the reason that you don't see that broken out in our annual report is because it's not audited by the Provincial Auditor. Just one part has an audit, so we don't break it out. If the Provincial Auditor had been prepared to audit that when we wanted to break out the cost centres, to audit it, we would have published it that way, but they didn't want to do it.

Mr Marchese: No, that's fine. I wasn't so much interested as to why not as wanting to see it for my own purposes just to get a sense of the picture.

I'm interested in the whole issue of changing the act, or at least interested in wanting to get to the problems you've raised. I want to explore whether the act is what needs to be changed or whether of course cabinet could by regulation provide what you need to get through the issues you've raised, or, thirdly, asking the lawyer here, whether it's not already provided in the act that should allow you to do that. I was going to ask the lawyer to comment on this until I got the regulation. So I will read that part that I think might allow you to do them and you

can comment as to whether or not that's possible.

It's section 13: "Subject to the regulations, the board may make rules with respect to," and it gives a whole list of them. Should I read them out?

The Chair: It's probably not a bad idea to read it out for the sake of the record, Mr Marchese.

Mr Marchese: Sure. Okay. Subsection 13(1):

"Subject to the regulations, the board may make rules with respect to,

"(a) the conduct of the board's employees;

"(b) the conduct of the board's tenants and their employees;

"(c) the conduct of any person on the board's premises for any purpose;

"(d) the use by any person of the board's facilities and equipment."

Doesn't (d) allow you the power to be able to make rules with respect to what goes into the farmers' market or to what uses you want the farmers' market to be?

The Chair: Mr Marchese, there are two regulations apparently. Could you just identify which one it is you're referring to for the sake of the record?

Mr Marchese: It says here chapter 0.15, Ontario Food Terminal Act.

Mr Northcote: The provisions of that section of the act deal with the rule-making power of the board, subject to the minister's approval. In fact, this particular section was tested in the courts and went all the way to the Supreme Court of Canada in the early 1960s as to the nature of a rule-making power as distinct from a regulation-making power, a regulation requiring an order of the Lieutenant Governor in Council. The conclusion of the Supreme Court of Canada was that this section was restricted to really administrative matters. In that case, the question was the power of the board to regulate opening and closing hours.

It's our opinion that this section does not, unfortunately, give us that power, if in fact a rule were to be made, and there is significant doubt as to whether or not it could be accomplished by way of regulation.

The Ministry of Agriculture and Food legal counsel, I gather in consultation with the Attorney General's office, concluded that in order to regulate interprovincial trade, it was necessary to have a change to the act as opposed to a regulation, that this kind of restriction could not be accomplished by subordinate legislation. I wish it was true, frankly.

Mr Marchese: No, you raise a good point. So this section was tested in the 1960s on some particular case?

Mr Northcote: Yes.

Mr Marchese: What was the case all about?

Mr Northcote: It concerned the power of the board to make a rule regulating the opening and closing hours of the farmers' market, I believe.

Mr Carsley: The terminal as a whole.

Mr Northcote: The terminal as a whole, yes. Mr Carsley reminds me it dealt with Saturday opening.

Mr Marchese: What happened with that issue again?

Mr Northcote: Ultimately the board was upheld, as I recollect, in that it did have the power by way of rule to regulate Saturday opening.

Mr Marchese: Okay. So that was the only issue that was tested in the 1960s?

Mr Northcote: That's correct.

Mr Marchese: And the board was upheld in terms of its power to be able to—

Mr Northcote: Use this section to regulate by rule opening hours. But there's a great distinction between an administrative matter like opening hours and a constitutional issue as to the power to regulate interprovincial trade.

Mr Marchese: But this other matter has not been tested.

Mr Northcote: That's correct, it has not.

Mr Marchese: So it's a question of legal opinion as to whether that would hold or not?

Mr Northcote: That's correct.

Mr Marchese: So it's quite possible the board could do this and have it tested out in court, obviously.

Mr Northcote: In fact, there was yet another case in which a tenant in the farmers' market was marketing out-of-province potatoes, contrary to his lease with the board, which restricted that right, and he commenced an action which our firm defended. He obtained what's called an interim interim injunction, which is an injunction of the courts that allows the status quo to continue pending a resolution of the matter. So he was granted an order allowing him to continue until the case proceeded in the courts. He did not press the case forward and the board elected not to pursue the matter further because we had great concerns as to the board's ability to successfully defend the case.

The board's opinion at the time was, and I gather still is, that if they were to proceed on that case and they were to lose, that would be simply opening the floodgates to a massive dumping of produce and they felt that in the circumstances it was best to cope with it on an administrative basis rather than pursue this action in the courts.

1050

Mr Marchese: This is the uncertainty over the issue, obviously. It hasn't really been tested yet to get a good sense of whether, if you did something, that would be upheld or not.

Mr Northcote: That's true.

Mr Marchese: Part of the problem is that the board has not set a clear direction. Let's forget policy, because you think you don't have that policy-making power, but my sense is if you had a clear policy, or wrote it down, that would give people a better sense of what the terminal wants to do by way of its use or not, and because that isn't clear, that first of all is the number one problem.

Mr Northcote: Something that you're not aware of is that the leases for that area, to my own personal knowledge, since 1975 or so have had an explicit provision whereby the grower agrees not to sell out-of-province produce. In the case we were talking about, he was in breach of his contractual obligations and he sought to

assert in the courts that the clause was not effective against him as being a restriction on his rights.

It's been very clear as a matter both of policy, in terms of the way that the board administers the activities in the farmers' market by discouraging the sale of out-of-province produce as well as in all contractual documents that they enter into with the farmers' market tenants, that this is not acceptable from the board's perspective.

Mr Marchese: I guess our job here is to determine whether or not there is anything that can be done without changing the act—I realize you're raising why that is a problem—and if not, to explore the changing of the act. The difficulty with that, just to give you a perspective, is that every time we change an act it has to come in front of the Legislature for second reading, then it goes into committee hearings usually, then it comes back and then it competes—

Interjections.

Mr Marchese: If you would allow me to finish the sentence, then it competes with other ministries which have other things that they want changed. That's the difficulty. Now, if the opposition, for example, is saying, "Oh, but that's not a problem. We won't even have a discussion or dispute," then usually that makes it easier; things can just move along. I haven't yet found an issue where things just move along, where the opposition says, "We're okay. The government has done the greatest thing we wanted it to do," and it's facilitated that way. Just to give you a perspective on the difficulties of that, I thought I'd raise that.

Mr Northcote: If I might comment on that, I understand that the legislative agenda is very crowded and that there are many things that need action.

Interjections.

Mr Northcote: I won't comment on what those might be, but in any event this act—

Interjections.

Ms Margaret H. Harrington (Niagara Falls): Madam Chair, we seem to have a problem.

The Chair: In this particular room it's very difficult to hear if there are other conversations going on. Thank you.

Mr Northcote: Mr Marchese, this act has not been amended in any substantial way for a very long period of time, with one exception, when it was amended about three or four years ago, by way of a private member's bill, in fact. One of the sections was removed. I understand the legislative agenda is very full; on the other hand, this is an area of legislation that hasn't been looked at for a very long time.

Mr Marchese: Sure, and I appreciate that. Let me ask you some other questions connected to that. Part of our intergovernmental problems in terms of breaking down barriers or raising barriers—as you know, we just had some difficult matter that the government has pursued with Quebec in terms of its own barriers that it created for Ontario and other provinces to be able to go into their own markets to compete for contracts, construction contracts and the like. We're dealing with that because

part of what provinces want to do is to break down those barriers, and there are many. There are probably approximately 500 barriers of one kind or another in all the different sectors we're dealing with. We're trying to break that down.

Does this create a problem in terms of how we deal with intergovernmental problems with respect to what can come in from other provinces? Because I can appreciate what we want to keep out of the country, and I have no dispute about that in terms of what comes into the farmers' market, but in terms of how we deal with our own problems intergovernmentally, what is your comment about that? Is there an alternative, a compromise that one could look at with respect to what Ontario can produce and sell in the market and what it allows, in a small percentage way, other provinces to bring in?

Mr Jeff Wilson: I think we have to be very clear in differentiating the two distinct roles that are served at the food terminal, those being what we call the A and B wholesale market and the farmers' market. As all of you saw yesterday on your tour, the makeup in those wholesale houses doesn't differ dramatically, summer, winter, spring or fall. What you saw in those houses is predominantly imported product—from Quebec, from wherever. So the question becomes, are we restricting trade to Quebec, to Manitoba, to Mexico, by saying, "On the farmers' market component we aren't going to allow that product in there"? The answer to that is no, because there's still a very good facility that's very adept at handling that imported product already existing at the food terminal.

Mr Ireland: Mr Marchese, just to give you an example of that, obviously you saw a lot of Washington apples. You could just as easily have seen BC apples as opposed to Washington.

Mr Marchese: You make a good point. I hadn't thought of our provinces competing with their products in the A and B warehouses. I suppose that is in part or fully the answer to the question of the fact that they can bring their products into those warehouses. Anyway, that's another question we would have to look at to see whether or not there are still concerns with that.

Mr Jeff Wilson: There's one other point as well. It goes back to your original question on the 20% and it ties in with what goes on in the A and B units. As a farmer, I do sell to some of the wholesalers in the A and B units, but what I gain on that 20% overall, first of all, and I also sell directly there, but I gain—I just call them leads. I service a fairly significant market in Orillia, another one in Niagara-on-the-Lake, as a result of my activity at the food terminal, but my business that would be sold in an A and B unit, depending on the year and the product mix I'm producing, is somewhere in the neighbourhood of about 20% in Toronto.

Once again, it's a very competitive place in there. They're only going to allow me one or two skid slots. Right next to me they'll have California broccoli or, in the summertime, Quebec broccoli, and I'm competing head-to-head in there. It's a very competitive, price-oriented marketplace in there, but it's also geared for that competitive, quality, price-oriented marketplace in terms

of infrastructure. There is dock-level loading; there is ability to use those electric hand carts all of you saw around there. None of that exists out in the farmers' market. There's no truck-level handling. It's all by hand or by forklift, that type of approach, which the Ontario farmers are geared towards. It's also reflected in the rent I pay. I don't have the service, the infrastructure, for my reduced rent, whereas I'm going to pay a much higher rate of rent in the A and B inside terminal markets for that infrastructure. I don't know how it may have appeared, but in terms of the produce business, it is a Cadillac infrastructure.

Mr Ireland: If I could just add one point, Mr Marchese, if you were to walk around the market when it was busy and talk to the majority of the tenants, whether they be in the wholesale units or in the farmers' market, the comment you would get is that one complements the other. If the farmers' market is opened up, it's just going to create a shambles of the whole terminal.

Mr Marchese: If we change the act, and presumably there would be many opportunities for the farmers' market, what financial benefits are there? What market benefits are there? What kind of opportunities are there for the people of Ontario, for the market, for the board, if we were to change the act? In addition, what other aspects of the act do we want to change to do what, or is this the only change we want to get at in the act?

Mr Carsley: The act, as was pointed out, was an act of the Legislature I believe in 1946 or 1947. It hasn't been changed in any material way since then. There are a number of things frankly that we do that the act really does not give us the power to do. No one has really challenged us on those things. There are things like licensing space, charging certain fees etc that we do now that basically, and I'm going to be quite frank with you, we don't really have the power to do. But in order for the market to function in a proper financial manner, if you want, we should have those powers. That is of concern as well. So it's really a complete revamping of the act.

1100

The other thing is you've probably read our other regulations—I go by the old terms—703, I guess it is, and 704. What's 703 now, Bruce? It's 872, I think. It's our bylaw and that regulation has to be changed. We have to have a proper business bylaw. I mean, we're working in the Dark Ages with this.

Even though the government has guidelines on things like conflict of interest, we don't have anything. We should have something included in our regulation 872 regarding conflict of interest and maybe even have that included in our act, one or the other.

Also there's our other regulation which is essentially our operational regulation, which I guess is 871 or something like that. I call it 704 still. That needs updating, but we can do that, in any case. We have the power to change that one, but we don't have the power to change regulation 703, which is our business bylaw.

The whole thing needs updating. As we pointed out, we're doing things now as the industry has changed etc and there has been a need for us to create more income

for the terminal, and just not getting it from rent but getting it from other areas. Some of those fees that we charge quite frankly are not prescribed in our act. I doubt anybody would challenge us, but if we were challenged we might find that we'd lose a source of income, if we lost in the courts. That definitely is another reason why the act has to be changed to modernize and give the board the power to do these things so we can't be challenged.

The Chair: Do you want to make a response? Would you identify yourself for Hansard, please.

Mr Bruce Nicholas: I'm Bruce Nicholas. The lady from Hansard knows who I am.

I can't shut up if somebody asks me a question about the food terminal. You asked, what would this effect be if through an act we made that Ontario only? The blunt answer to that is for the last 20 years we've been following the guidelines and making it Ontario. We've been bluffing our way through and cajoling and doing the best we can with every level of government that's asked us that question.

If you put that in the act, that'll ensure that there's that industry in Ontario, that those people have a place to come to sell, that they have a livelihood. They compete right now among themselves and with imported product all the time. If they have to compete with their neighbour beside them on dumped product, they haven't got a hope. We would like that in there to finally give us the strength to go out there and ensure that the people of Ontario have an agricultural industry in fruit and vegetables. That's the blunt answer to your question.

Mr Curling: Good to see you back. First I should say that on my visit to the terminal I was extremely impressed in a couple of areas. About the people themselves, I find them quite receptive and really involved and rather pleasant. The employers are rather pleasant. It tells about the organization if one sees that and how tenants in your group operate and how they respond. I like the word "tenants." Being the former Minister of Housing, I dealt with quite a few of them, landlords and tenants. I found your tenants there seem to be happy campers or happy residents from that point of view. They seemed comfortable.

One of the things my colleague was saying to me he was impressed about, and we're not quite sure how impressed we were, is your boardroom, a cramped place. You operate out of that. You're one of those who are not talking about expansion and having luxurious boardrooms and yet you're so effective in what you're doing.

As you speak, I've tried to understand. I've learned so much in the short time that you've come before us about what the food terminal is all about. You changed my perspective about it from the point of view that I understand a little bit more about it.

As I hear you put forward about the changing of the act so you can be more efficient, more effective, more representative and your tenants more or less feel that if they're competing, they're competing in a fair market, and having still provisions for the others who want to bring their outside produce in, still have an area to

operate, am I getting that you have put before—it seems a long time—all governments, Conservative, Liberal and NDP governments, the changes to this act as you've been carrying on a long time, as it is said, somehow bluffing your way through this? We've now reached a stage where we should have some type of proper legislation or regulation in place. This has been put forward by the government. I don't want it to be confrontational.

I gather too from what Mr Marchese and all who were speaking is that it's really not a priority of the government. He said that, "Well, you have to go through all these processes and have to go through committee," and he's giving an indication of legislation, which you all know anyhow. Of course, as our position, we would like some of the best legislation so it can be effective to you.

So my feeling is that it has been there; it's not a priority. I didn't have the act before me to find out what part of the act you want to change, but it seems to me all that has been put forth. But what is the problem? Could you say the problem is that the government of the day now finds—and I'll put it in a very diplomatic way—that it's not a priority right now and it's so busy doing other things and it has promised you it would deal with it, but not right now?

Mr Ireland: I don't know, Mr Curling. I mean, maybe it's partly our own fault because it has never been pushed far enough, because the feeling was, every time we've taken it to the ministry, "There's a large legislative agenda," and it's this problem and that problem, and you go through debate and so on, so as Bruce has already mentioned, we've been able to bluff our way through, so it's a situation that has arisen and then it just kind of subsides for a while and then you go on for a period of time and then it pops up again.

But now, I'm of the opinion that it's at a point where action has to be taken, because there are people, I can assure you, who are out there right now just waiting to see what's going to happen with the present situation, because it has been publicly challenged and they've come forward and they've said, "We are going to sell Idaho potatoes," and they're there and our inspectors have found them there. There are other people sitting back and saying, "Okay, if the situation's going to be done this way on Idaho potatoes, then what's to stop me from doing this on" whether it's apples or onions or whatever, and it is going to happen. I'm of the opinion, anyway, that I just don't think we can continue to bluff our way through any more. Action has got to be taken, of some kind.

Mr Curling: Let me say this to you too, that there is legislation that has come before the Parliament quite often, especially labour legislation, that has seen quick movement, fast. You see, the government is responsible to put things on the agenda, to put it forward, to pass it. As a matter of fact, there are enough rules around here to even hurry it through the House very quickly.

Coupled with that, I think what you're hearing from this committee, which you had the opportunity to sit with all three parties, is that there are cooperations that will come about to see this happening. Now that I understand it more and now that—I can't speak for the Conserva-

tives; they always speak for themselves, sometimes very well, sometimes—but the fact is that to see this matter through, seeing that you've put it on the table, seeing that the government feels that it is not a priority or it may be stopped, as Marchese said, by these obstructionists over here—that we may be so slow in not putting it through.

But I am convinced that you need it and I feel that if it is pushed and we can get some commitment from the government members now who see that you have then gone before the bureaucrats and the minister, that all the minister is saying now is that it is not quite a priority—they didn't put it in that word—that there is a backlog and there are many things, that putting it forward now, you will get the cooperation from our side of the House.

1110

Ms Harrington: Do you speak for your party?

Mr Curling: I speak very well for my party; that's why I'm here.

But you see, the problem is that we're always outnumbered when the vote comes. But the fact is, I feel that the process here can proceed. You want an answer very early one way or the other, not hanging there to say—if the government says no, you know exactly where you're at; if they say yes, you know where you're at. Right now, it's hanging there because they are too busy doing their work. This is the work itself.

Mr Ireland: First off, Mr Curling, I thank you for your comments. I think on behalf of the board too, we sincerely appreciate you taking your time to come down and see first hand what the market is actually all about and tour the facilities. We would encourage you to come back at some point later in the spring, when the weather's a little better, when the market, the whole terminal, is a little busier, and just see first hand what it's like when it's quite active, as opposed to yesterday, when basically they were just cleaning up.

Mr McLean: At 5 am.

Mr Villeneuve: At 4 am.

Mr John C. Cleary (Cornwall): Any time after midnight.

Mr Curling: I don't know if you know that where I'm from in Scarborough North, there are quite a few farmers and I'm quite familiar with 5 o'clock waking up to the bellowing of cows.

Mr Ireland: You don't have to be there quite that early. But I think, though, that as a result with our initial meeting in December—somebody commented on who attended from the board yesterday. Under normal circumstances, I think our whole board would've been there. I think that was shown at our initial meeting back in December. I encouraged the whole board to come, which they did, to that meeting. We had the first one back in December. They would've all been here yesterday and today. That just shows the interest that the board does have.

Mr Curling: One of the things I may ask—and maybe the legislative research could give us that—I would like to get the section of the act that you were concerned about because I'm just learning that part. That was my question. As soon as I heard your presentation,

I didn't know what part of the act that you wanted amended and whether or not, as Marchese was trying to make the point, you were talking about legislation or regulations. Somehow I think maybe it could've been done; I don't know.

The lawyers may know that. Maybe it could be done in regulations. But in fact it was too easy for them to do and they said, "Maybe it's legislation." So therefore legislation then forced you back where it has to go through the House agenda while the regulation itself could take the authority and the responsibility of the minister. Forget about the Lieutenant Governor, because that's the minister we're talking about sitting down there one day and saying, "Do it," and it's been done. I'm not familiar with the regulation or the legislation that it governs—I mean for the first time—about section 13 of the act that you're talking about.

The Chair: Mr Curling, our researcher would like to respond to you.

Mr Jerry Richmond: Mr Curling, members of the committee, I do have a copy of the latest version of the act in my office and the two latest regulations, 871 and 872. I'd be pleased, if it's convenient for you over lunch hour or if you wish them sooner, I could go to my office and get copies made for all the committee. If over lunch hour would suffice, I'll do it then. If you want it now, I'll make the necessary arrangements now.

Mr Curling: Over lunch hour is fine with me. I just want to know what we're talking about. As a matter of fact, it really, in a sense if I dare say it, doesn't matter because it's the process I want to speak of more. But when we were speaking about what act I was speaking about, but the fact is that process of having—

Mr Richmond: Maybe I will, if you'd excuse me, go over to my office and get a set run off for all committee members and bring them back.

Mr Northcote: I have a set here you can borrow.

Interjections.

The Chair: All right. Continue, Mr Curling.

Mr Curling: Yes. And so we know exactly what we're talking about, and on the other hand that if there are any other ways in which we can assist you in encouraging the government to move on this—and I'm not saying to act on it one way or the other; just act on it and decide whether they're going to amend the act or they're going to make it a regulation and change it to make you have that provision in which to do the necessary changes you want there.

I know that my party will be happy to do so and I know that the government has the capability to do this in a very, very short time. But the fact is that having the capability and doing it is another matter. But I know they do have the capability of the numbers in the House in controlling what gets on the agenda. They can do that.

Now, as you know, if there's a legislation change, you're looking somewhere when the House opens back again in March or so before that introduction happens. But if it's regulation, that can be done immediately. I just wanted to make those comments because I think we're arguing about certain things that bother me a bit. One of

the things that you had said there is that it's almost through a test, that if you put it through the courts, you are scared to lose your cases. All this does, with all respect to the lawyers around, is give lawyers money. And then the fact is it wastes time and then others sit on the fence and wait to see who are the winners and losers. As you said, if you lose in the process through the courts, there are others who will challenge you beyond. This is completely unnecessary.

The commendable part about the Ontario Food Terminal is the fact you get no money from the government. You run an efficient system, from what I see, and all you need are the proper regulations or legislation to do the job. I don't see why we as legislators can't do that job.

Mr Jeff Wilson: I'd like to respond, if I could, to the comments. They're certainly appreciated, as our chairman stated. But I think also what we're dealing with here is the maturing of an industry out there. While food itself is a significant component of the Ontario economy, it's somewhat vague as to what role the agrarian society or farmers play in this Ontario economy. I think we all accept that because we're really not very many people. We acknowledge when we're talking commercial farmers, we're talking somewhere between 40,000 and 60,000. But nevertheless, we're still contributing an aggregate of about \$1.5 billion of economic activity.

In the past, we basically as farm groups backed off on some of these types of initiatives where we felt there was a role to be played by changes in regulations. What we're saying now is, if we're going to be there in the game serving Ontario society consumers and providing employment, we're going to need some tools. We have definitive requests from government that we're going to require as farmers out there in order to get through this. We're not asking for deferential treatment. We're basically asking, especially in this particular context, for a specific regulation that gives us a fair shot in this game that we're dealing with.

Mr Curling: Let me just make some other comments too, because it's important, on what were some of the reservations that I had before. I think I mentioned earlier on when you came before us that the palate of Ontario has changed dramatically because of its demographics and its greater ethnicity. I was worried somehow that the kind of food that Ontario produced only would not really satisfy the palate of many people. Having taken an action to do that, what I saw out there as far as even the ugly fruit from Jamaica—if I had to comment on one, the fact is that it is there and provisions are being made to accommodate that.

What you're saying now, on the other hand, the Ontario farmers and the growers here, is that somehow they should have an arena, an area, in which they can be protected while making provisions for those other, if you want to call them such, imports, which they are. So I am very comfortable now and I want to put that on record because the first time I was quite aggressive in the fact that, why are you dominating this space only with that? But having seen it and understanding it now, I realize that you are making provision, and that's good.

Mr Ireland: Mr Curling, if I can just add to what Jeff

said, as he's commented, our industry, the fruit and vegetable industry certainly, as most of the other agricultural commodities too, is going through major changes right now because the world has become so small, which you saw yesterday. The days of an Ontario producer being able to market his products and just say, "Because it's Ontario," are gone. The consumer's not going to buy just because it's Ontario. If he doesn't supply the quality that the marketplace demands and the consistency of supply, he's not going to be around. You can't blame the retailer. They have to have a consistent source of supply and the quality the consumer demands, because if the Ontario producer isn't going to supply it, somebody else is going to.

Mr Cleary: To follow up on what my colleague said in the way of a comment, these regulations, I guess, you tell us have been of great importance to you for many, many years. I guess that I've learned quite a bit in the last few days about that, and it should be equally as important to each of us as members. I would hope there would be movement that would make your job at the terminal much easier too.

1120

The other thing I would like to mention maybe in the way of a comment is that in our part of Ontario, and I think I've mentioned it before, there's been a lot of problems in the labour movement between provinces and also our truckers going into another province, facing penalties and everything else that goes along with it. On agricultural produce, some of them have come into my office and they've complained, more so in the summer months when the berry season is on, the strawberries and the raspberries. They tell me they have more difficulty getting Ontario produce than they do the province of Quebec, and that was of great concern to them.

In fact, I think up as far as Brockville or west that it would mostly be produce from another province, and they're very concerned about that. I know that you people, as board members, have been working very hard and you know about the issue. It's more of a comment than it is a question.

My colleagues talked a little bit about pesticides and chemicals on your produce. As board members, I know it affects the federal people and the provincial people. Maybe you'd like to comment on a better way that this could be handled, instead of just the spot inspections that you talked about.

Mr Ireland: I think we have to be clear. There are two issues. There is the grade adherence and there's the issue of pesticide residues. Both of them are the responsibility of the federal inspection, pesticides under Agriculture Canada, as well as the Ministry of Health now, but they also work in conjunction with the related provincial ministries on inspection.

The sampling is not just a hit or miss. It's based upon a model to give a representative sample of what comes in, both imported and domestically produced product, the idea being that if a problem occurs, the problem becomes identified, visible, so that the problem can be dealt with.

When we talk about inspection relating to grade

adherence, that originates federally. I think we're all aware there is a big movement afoot to deregulate that completely. So the farmers have a vested interest, along with possibly the wholesalers and consumers as to how that pans out in the real world, because there is talk of doing away with designating a grade as well as adhering to grade standards.

But one of the things we have to be clear on, on pesticides specifically, is that back when we were doing roughly 50,000 samples nationally on all foods, basically what the sampling was bringing out is, bluntly, whether we like it or not, there isn't a problem. What we've been doing in the last six years is increasing that sample base approximately 50,000 samples a year. In other words, we will be sampling somewhere in the neighbourhood of 300,000 food samples this year specifically for pesticide residues and the reality is that other than some spot moments—and I can give you an example. Last April, Florida strawberries, because of the rains, were coming in with a fairly high detectable level of the fungicide Captan. It was identified and the problem was dealt with very expediently, because the reality is that human health is at issue.

So the question becomes, what could we do better to the system? The problem originated in another country. The problem was identified here through this model of random sampling and the problem was dealt with to the satisfaction of all the related regulatory bodies involved. But, once again, that is strictly a government body that does that initiative, that type of work.

As the food terminal board, we are facilitators of running the entity. As well, we have incorporated and helped the inspection services wherever possible. In fact, Agriculture Canada is trying out a new pilot project now. They have a temporary facility on site at the food terminal to deal with their increasing random samplings of both grade and pesticides.

In other words, we can accommodate the system but the system is devised by the politicians.

Mr Villeneuve: I'm fairly satisfied that I have no problem with opening up the act, the leases. We understand that there are some people who have the original lease subleased with large profits. That's beyond your control. Is there any possibility that this may be a factor if the act is opened and some of the people who are subleasing, or whatever, would bring forth—what are your thoughts, legal opinion on that area, which tends to be controversial at times?

Mr Carsley: The fact is that the leases are there. They were given in perpetuity. They have been an issue with all political parties. I know that the previous committee received legal advice on this. Frankly, my understanding is that the leases definitely could be broken, if you wanted, if some compensation were paid. That compensation could end up being quite high.

The people at the terminal who have those leases, some of them do change hands for a considerable amount of money. That, I should say too, with the recession has declined somewhat, but one must remember too that in some of these transactions the people are buying a complete business. People tend to look at it being the

business changed hands and it's just for the lease. You must remember that most of the tenants have put in fairly significant leasehold improvements and that sort of thing. So when people say the tenants are receiving this great amount of money, you must remember that often a whole business is being purchased, with its customer list etc, and also various other assets. That's a way to defend it.

What the politicians want to do with the leases is up to the politicians. We as a board tried last time and we tried, as our former chairman will tell you, quite hard, based on the committee's recommendation, to get our major A and B leaseholders to agree to a change and to agree to do away with the perpetual feature of the lease. Of course, they wouldn't do it. We were not negotiating from strength. We had no real levers at all.

It's a bit of a conundrum that's been faced by all three political parties. We feel that the lease became the biggest issue, in our last go-round with the committee. I think I speak for our directors that if we get bogged down completely in the lease, we're not going to achieve really very much.

Mr Villeneuve: But is it not going to be a factor if the act is opened that there will be some people kicking over the traces, as we say on the farm?

Mr Carsley: That's why we were sort of hoping that the all-party committee here could give us some help, because it's our understanding, just reading between the lines, that if the act gets in the House and everybody starts chipping away at it, then chances are the thing might fall by the wayside. I think our directors and my associate Bruce Nicholas have put forward their opinions in a very firm manner. We do feel that we need, apart from the leases, some changes in our act, and one of the main reasons we need them is to try to control the origin of product in the farmers' market.

1130

Mr Villeneuve: I have no problem at all with that aspect of opening up the act, but I think inevitably, where there are vested interests, they would like to see the perpetual leases be looked at while the act is being opened up. That does not affect the farmers' market area, I gather, but it certainly does affect units A and B.

Mr Carsley: That's correct. It doesn't really affect the farmers' market to any degree at all.

I should point out too, subleasing was an issue last time. As far as I know, I think we only have one company now that is subletting space. Am I not right, Bruce?

Mr Nicholas: Yes.

Mr Carsley: Yes, there were several before. There aren't any now.

Mr Villeneuve: I guess as that number of subleases is reduced, it's less of a problem.

Mr Carsley: When we were talking with the last committee, I think we had three or four of them.

Mr Villeneuve: I also recall, I believe, you had one stall which remained unused for a period of time.

Mr Carsley: Yes. I have to refer to my associate.

Mr Nicholas: Was it 18 months?

Mr Carsley: Almost two years.

Mr Villeneuve: Certainly the goodwill that was there prior to it going vacant—the sublease would not be nearly as lucrative as someone who is taking over from an ongoing—

Mr Carsley: That's true.

Mr Villeneuve: I think people don't differentiate the goodwill that goes with the list of customers and the ongoing business, as opposed to starting up from an empty stall.

Mr Carsley: Right, because there's no question that it's there if you move in right away after acquiring a business, even if you change the name.

Mr McLean: I want to follow up on that. If you had a vacant unit for two years, did you receive any rental from that?

Mr Carsley: Indeed we did. If the perpetual lease has a good point, if you want, during a recession of course we received full rent for that because the lessee wanted to keep that lease intact. So we didn't lose any rent at all. Conversely, with our short-term leases, that short-term leaseholder cost centre, where we had a problem—well, it was a situation where the business really fell by the wayside and we were left with space to rent in our short-term leaseholder, two sections of it. That space was available for over a year also. We advertised it and nobody wanted it until just recently.

Mr McLean: You have brokers at the terminal. Could that broker buy a carload of potatoes from PEI and have it directed to, say, the state of Maine or to Buffalo, to another country?

Mr Carsley: Yes, I suppose the broker could be an exporter too. I'm not sure that many of them do export. Is that your question?

Mr McLean: Well, he's buying out of province. He's buying from Prince Edward Island, a carload of potatoes, and he is routing them through Ontario to another country. That broker can do that.

Mr Carsley: That could happen, sure. I think the broker can certainly do that.

Mr McLean: Is it happening?

Mr Carsley: I'm not that familiar with how all the brokers operate, but I would say, just based on what I know, it doesn't happen very often if it happens at all. It could happen.

Mr McLean: We talked earlier about the apples coming from Washington and BC, and you have them both there, I'm sure. Would there be a difference in the price of those apples? Would it vary substantially?

Mr Ireland: It could, but not necessarily. Often apples will come in from BC; they can come in on consignment.

Mr McLean: Would the ones that come in from Meaford or the Owen Sound area be the same price, roughly?

Mr Ireland: Yes, they could.

Mr McLean: I would like your clarification on how you think NAFTA is going to affect your terminal, with the trade, with the barriers being changed. How do you think it's going to affect your terminal?

Mr Jeff Wilson: I think one of the things we have to be clear on is that in the past, up until deregulation occurred nationally with revisions of the CAPS act, the Canadian Agricultural Products Standards Act, over the last four years, a product had to come into Canada with a declared price. What we're finding now is that's no longer a requirement. So if you're a big shipper anywhere, say, Mexico, California, what have you, that's packing 20 or 30 trailer loads a day of product, those are going out of your facility; they're not all sold.

So what we're finding now, what's shaking out in the real world is that probably 70% of the product out there is sold at a firm price when it leaves FOB a packing facility in another jurisdiction. Those aren't the problem areas. It's the 30%, give or take, that are leaving that aren't sold, because the reality is that once that load hits Chicago, if it's not sold, the end market potential is reduced substantially. Because Toronto is a huge draw for product, because it's one of the major end-product centre terminal markets in North America, quite often that product can arrive right in the Toronto area without any price associated with it whatever, and the reality is it's going to be sold at some price.

That's where this deregulating and liberalizing trade issues are going to affect both us as producers, as well as foreign producers, because it is bringing some disruption in the concept of an orderly marketplace where you compete on the basis of quality, service and price, but you can't compete if something's being discounted 20%, 30%, 40%, 50%. We're starting to see that on a regular basis.

I think, for the record, we should also add, because the previous comments dealt with how the A and B wholesale units, I read into the question, viewed the changes to the farmers' market that, conversely, they're more concerned that what's happening in the farmers' market, or starting to happen, continues because they see a definite problem with their businesses in having to compete in a similar fashion with someone with nowhere near the overhead they're facing at the inside A and B units. So they're very supportive. Harold Brown, who is in Israel right now, would go on record as stating that they are supporting completely that the Ontario farmers' market be for Ontario farmers only.

Mr McLean: I guess the problem that I have is the dumping of a lower-grade product from another jurisdiction. They want to get rid of it quick because they know that it's deteriorating and they're going to bring it to this market. What do you say about that?

Mr Jeff Wilson: I guess the best way to answer it is that when you talk FOB shipping prices, where you used to see a firm price of, say, \$21 a case for asparagus—asparagus is a good example—now you're seeing a range of \$14 to \$23. In other words, there are enough vagaries in the price quotes that you have to specifically quote on a specific day for a specific load. That's how they're getting around the issue of anti-dumping, because to prove in the produce industry that something is being dumped, as the apple producers found in their lawsuit nationally three years ago, is a very difficult and elusive issue to deal with in this day and age of liberalized trade.

Mr McLean: We talk about 300,000 inspections in the services. Are there inspections every day by inspectors at the market, and how many inspectors are there?

Mr Jeff Wilson: Bill could comment on the number. Obviously the number of inspectors—when we're talking, once again, differentiating between pesticides, which is a separate entity, and grade and phytosanitary adherents, with grade and phytosanitary adherents is where we're seeing the most significant cutbacks in terms of personnel, but I don't personally have the number at the food terminal within Ag Canada.

Mr Carsley: I believe there are 20 inspectors. Their office is at the terminal, but they also inspect product coming into other locations such as a chain store like Loblaws, that type of thing, so some of them do go off the market. Basically, there are 20 of them. They also use the terminal facility as their training area. They train people there as well.

Mr McLean: The other question I have is profit and loss. Are you in a profit position? I see you have to have it audited every year. It has to go to the minister; a copy goes to the minister. What is the financial position? Do you still have outstanding hundreds of thousands?

Mr Carsley: This year, we are profitable for the first nine months; we have an excellent profit, which is good because, I think we're going to have to pay, although our chairman hasn't had a final opinion yet or a final, shall we say, decision yet from the treasurer. Our board doesn't feel we should be in the social contract. However, if in fact we have to pay the \$70,000 dividend or tax, however you want to view it, it's a good thing we do have a reasonable profit for the first nine months. I think there's no question about the fact that we will be profitable this year.

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You mention our debt. Our debt, which we took on mainly to finance the refurbishing and addition to our cold storage, is quite significant. We are hoping that we can get the treasury to agree, along with the ministry, to give us a loan guarantee on our major piece of debt, which was taken out to finance our new cold storage.

The ministry has not wanted to do that, but we are hopeful—we're still working with them—that we can get that guarantee. That will save us some money, and we believe that the two loans together, the one we have the guarantee on and the major loan we don't have the guarantee on, if we could put them together into a longer term piece of debt and receive the government guarantee on both of them, then we'd be in a much better position financially. We are hoping to be able to do that.

Mr McLean: What are your two major debts? How much are they? What interest are you paying on them?

Mr Carsley: I think it's about \$5.5 million in total, but the first loan comes due in 1996. What we'd like to do is take that loan, because we won't have it fully paid off in 1996 so we have to refinance anyway, and put them both together into one loan with our bankers at the Bank of Montreal. We've had a very good relationship with them over the years, and they've been very accommodating. But I think they'd like to see it as well. They'd

feel more comfortable with the government guarantee. They have no guarantee at all now. They just lent the money based on the merits of the project.

Mr McLean: They have the facility as an asset.

Mr Carsley: No. They don't have anything. We can't pledge any of our assets without receiving the minister's approval. So none of our assets are pledged to anybody.

Ms Jenny Carter (Peterborough): I'd like to say I did enjoy the tour yesterday, and I think one thing that helped me understand was just why the permanent leaseholders are because you have those pictures of the old street traders who obviously were moved willy-nilly and also I guess some of your lessees have spent quite a lot of money on the facilities, which I guess is another factor.

The first question I wanted to ask has been partially answered at least. Obviously, it is your policy that you only have Ontario produce in the farmers' market. I understand that your main means of controlling that is the actual leases the people sign. I guess that worked for a while and now it's being challenged and the challenge was not destroyed, as it were; that's why you're in danger of having the whole thing blow up on you.

What do you do from one day to the next about this? Do you inspect the farmers' market to see whether other produce is coming in? Do you discourage it?

Mr Carsley: I can comment on that. As Bruce Nicholas said, we sort of bluff our way around. The people did sign leases with a clause in it saying that Ontario product only was to be sold in the farmers' market, so we use that.

However, one of the major operators who's challenging us has a very clever lawyer who has worked against the food terminal before, if you want, on the Grogenwagen potato case that was mentioned here, and so they're fully aware of what the situation is, and they have a very good feeling that unless we get some more oomph behind our act, if you want, that they'll win in court.

They have challenged us, this particular group. Well, it's not a group; it's a company with five brothers. They're tenants in the farmers' market. They started a court action against us in—now I'm going to forget the year; I guess it was in 1991. Is that right? We went to the minister, who was Mr Ramsay at the time, and said, "Look, Minister, we have to do something," because his senior partner told me, quite frankly, he didn't think we had a hope—now, he may not agree with the senior partner, but the senior partner, Dick Shibley, told me he didn't think we had a hope in hell of winning against this unless we had at the very least a regulation. We would have a lot better chance of winning in court if there was something in the act, even beyond a regulation, which would give us the power in the act.

In any case, we were challenged. What happened then was that the minister decided at the time that he would not support changing the act, but that there were obviously problems in the farmers' market. That's how the farmers' market task force came about, which did make a number of recommendations based on the farmers' market.

Ms Carter: If somebody is selling potatoes from the States, or whatever, how do they come by those? Do they go down with their trucks and buy them there?

Mr Carsley: They merely phone up a producer or a packer in the States, or talk to a broker in Ontario and buy them that way. It's very easy to buy them.

Ms Carter: In practice, what kind of radius would people who use the farmers' market come from? Parts of Ontario are a long way away. Parts of other provinces may be, in some cases, nearer.

Mr Carsley: To give you an idea, the buyers come from all over Ontario and the tenants are growers from basically all over Ontario—mainly from southwest Ontario, the Bradford area and the Niagara area, but there are some from eastern Ontario as well. As we pointed out, we have 6,000 listed buyers and they come from all over the province. The backbone of our market, though, are the 400 to 500 greengrocery stores in the Oshawa to Niagara Falls area.

Ms Carter: Obviously, those are the population centres.

I just had two questions I wanted to raise. I don't think I've ever seen kumquats before and there were some other exotic things. It was nice to see. Does much of the produce coming in get used for manufacturing? Is it made into jams, marmalades, or whatever, or is it mostly used fresh?

Mr Carsley: The food processors don't really buy anything off the terminal—the odd thing maybe, but nothing major—so really it's just the householder who would do his or her own preserves. That's how it would be used.

Ms Carter: They would have their own lines of supply independently—the manufacturers.

Mr Carsley: Yes, the processors make very large deals and they don't really buy off the terminal. What we're talking is just really product that's destined for the fresh market.

Ms Carter: We also talked about inspection and pesticides. One thing that bothers me is this whole question of radiation treatment of produce. I believe it is used for potatoes and onions, for example, to prevent them sprouting.

Mr Carsley: I think I'll have to defer to somebody else on that. I think it's legal in Canada now, but I'm not entirely sure. It certainly is in the States, I believe.

Mr Jeff Wilson: Actually, the process isn't an approved process in Canada right now, although we are leaders in developing the technology. Right now, the biggest potential for irradiation appears to be in Third World countries dealing with the phytosanitary component of complying with grade, which could be plant cleanliness, especially insects, as well as diseases and extending shelf life.

The US has set up a protocol that any product that is irradiated is identified by a specific graphic piece that identifies that product as being irradiated.

Dealing with the phytosanitary component, it still has to be dealt with. The other option of dealing with that,

especially in developing countries, is to gas it in storage with something like methyl bromide. So the question becomes, we may not like irradiation, but it still has a bit more potential than some of the existing ways we're dealing with this, because we certainly don't want things like the Medfly and a number of other pest products coming into Canada. I think we've seen the result of that, such as the whole gypsy moth issue, to name another as well where we had been lax.

The Chair: Excuse me, our researcher has a technical question at this time.

Mr Richmond: Mr Carsley, following on from Miss Carter's question, I wonder, just for the benefit of the committee, earlier you provided me—and I believe it was circulated to the committee—with a sample dummy A or B unit lease. You discussed earlier the lease for the farmers' market which has that provision restricting the lessees, that they're only going to market Ontario-grown produce. I'm sure you can comply with this, could you provide a sample lease like that just to the clerk for the benefit of the committee?

Mr Carsley: Do you mean a farmers' market lease?

Mr Richmond: Yes.

Mr Carsley: Yes, certainly.

Mr Richmond: Just so the committee could see that clause that each of the lessees has signed in their lease.

Mr Carsley: We have one here, Jerry. Our vice-chairperson has just produced it. It's an open grower's stall document, but the clauses in it, I guess they're clauses 3 and 4 which pertain to the Ontario-only feature of the lease. They're basically the same for the dealers and the dealer-growers as well as the growers. So this lease generally, in terms of its format, is the same.

Mr Richmond: I was just thinking, if we wanted to make reference to it in the committee's report, we would have that.

Mr Carsley: We have one for you that you could have afterwards.

The Chair: Members of the committee, I'm going to suggest that because we have a subcommittee meeting which we have to deal with immediately following this morning's session, with your indulgence, we would adjourn the committee meeting at this point and start again at 2 o'clock to continue the portion that the government members are in the midst of. You are only about seven minutes into your 20 minutes. That way the subcommittee members could meet now and then still fulfil their noontime appointments in their own offices. Is that agreeable to the committee? All right. We will adjourn and resume again at 2 o'clock. Thank you to the deputants.

The committee recessed from 1152 to 1406.

The Chair: I call the afternoon session of the committee to order. The government caucus has used seven minutes of its 20-minute rotation. Ms Carter, you had the floor.

Ms Carter: I was asking about radiation treatment of fruits and vegetables, and we did carry on this conversation outside. I was asking whether somebody buying

produce that had been irradiated would have any means of knowing that was the case.

Mr Jeff Wilson: As we discussed quickly outside, while irradiation is not allowed in Canada at this point—although the technology, for the most part, has been developed here—the United States, where the technology really seems to be taking off, is developing a protocol of identifying products that have been irradiated by a generic symbol on any product so that, as time goes on, people will associate that symbol with an irradiated product.

Ms Carter: But if something had been irradiated and didn't carry the symbol, would there be any means by which you could tell?

Mr Jeff Wilson: I'm not a scientist, but from what we've been led to believe, as in so many things we deal with in food, there's no way to discern technically that a product has been irradiated.

Ms Carter: We were given parts of the act, and I'm just looking at section 13. It says: "(1) Subject to the regulations, the board may make rules with respect to..." and then under (d) "the use by any person of the board's facilities and equipment." It looks to me as though that should cover the question of whether people from outside Ontario can use the farmer's market. Does that not cover it?

Mr Northcote: That was the question Mr Marchese asked earlier. In fact, we don't believe it can, because we don't believe it can be done by way of rule at all.

Ms Carter: In spite of what's here.

Mr Northcote: We have significant doubt as to whether it can be done by regulation, because it's really a legislative matter rather than an administrative matter.

Ms Carter: If the law were changed, how could you be sure that produce appearing at the farmer's market was grown in Ontario?

Mr Northcote: That's something I think management would have to answer.

Mr Carsley: It's generally fairly easy. First, you've got the markings on the container. Second, there are certain things that aren't available in Ontario in the wintertime etc—there are certain commodities you just know aren't available—and if they turn up there, you know they're from another jurisdiction. Also, the people in the terminal, particularly the growers, will certainly point to the fact that one of their neighbours, who might be a dealer or a grower-dealer, is selling something that is coming from another jurisdiction. So it's reasonably easy to tell. We can tell pretty easily.

Ms Carter: So you don't have people shipping out boxes labelled "Ontario"—

Mr Carsley: That can happen, but when we get a suspicion about that, the Ministry of Agriculture and Food sends its inspectors up to the packing house to make sure there's no hanky-panky going on. There's a fine for doing that because that's fraud, of course. But it is quite easy to control.

Ms Carter: So that aspect doesn't worry you.

Mr Carsley: No.

Mr Robert Frankford (Scarborough East): One of the things we saw yesterday was that rail usage is declining and is becoming quite minimal. Do you see it disappearing entirely, or are you required to have it?

Mr Carsley: Over time, rail usage has diminished to almost nothing. I think we're down to about 50 cars a year, and at one time all the imported product came by rail. I think we mentioned that to you. We used to get 6,000 or 7,000 cars a year. Now, it all comes by truck.

It's hard to say what might happen. The rail service really is so abysmal, both in Canada and the States, whether it can ever be resurrected I can't say. Certainly from a straight environmental point of view and, one would think, from a cost point of view, rail should be cheaper. But when it's a perishable product like produce, when it could come by truck from California in maybe 72 or 80 hours and from Florida in about 24 hours almost, it seems to be a better way of transporting it.

That's not to say that not many rail cars come into the terminal. Quite a bit of product does come piggyback and then is offloaded up at the freight yard and comes down that way. But generally, most of the product that comes to the terminal comes by truck, no question. But our directors want to keep a rail siding in case rail does become more active.

Mr Frankford: You don't have any particular opinion about the long term?

Mr Carsley: If it goes on like it is, you could probably almost forget about rail. That's my view.

Mr Frankford: I don't know if there are questions about continuing in the present site. Is the congestion of the roads there becoming a problem?

Mr Carsley: Actually, that's one of the issues the last committee addressed. They made some recommendations, some of which we acted on, and we have a much better road system now. We put in a one-way system that has worked tremendously well. The jam-ups, which used to be so terrible, have all but been eliminated, which is amazing, because we're still getting as many users in the market. All it took was trying to get the thing into a bit of order. We probably should have done it 20 years ago. But it works quite well now, so it isn't as congested as it once was.

Mr Frankford: You are referring just to your particular site, not the overall—

Mr Carsley: Oh, I see. Access to the terminal is generally pretty good because it is in a good location, it really is. A lot of our tenants come from the Niagara area, southwestern Ontario. The highway system into the terminal from rural Ontario is good and it's generally fairly good from around the city, too.

Mr Frankford: So there's no real question about moving elsewhere.

Mr Carsley: The board has looked occasionally. We had the odd developer coming along when that seemed to be a good area for development, the lakeshore lands etc. Our board took the approach, "Put your money where your mouth is," and nobody ever did. Right now, we're in an excellent location. I wouldn't think our board of directors would want to move particularly, unless there

was a huge explosion in terms of growth.

Mr Frankford: In terms of long-term trends, with the development of megastores, does that retailing trend have the potential of making part of your operation less important?

Mr Carsley: Certainly that's a possibility. As some of these independent chain stores like Knob Hill Farms, Highland Farms, Sunkist, become bigger, they can buy more product direct. What we've found, though, at the terminal is that even though some of these larger players are now buying more product direct, there always seem to be some smaller greengrocer types who are getting bigger, so it tends to be a bit of a cycle; we haven't suffered as much as you might think. If you can believe it, we get about 100 new buyers a month; now, some people fall off at the other end. It's the ethnic population driving this whole thing, the Koreans particularly. They're all in the greengrocery business or the convenience store business, that type of thing.

Mr Frankford: Do things like the Price Club, and I don't know about Wal-Mart—

Mr Carsley: Price Club does have produce in limited amounts, but it's my understanding—maybe Gary and Jeff know more about this than I do—that Price Club actually deals through a wholesaler who buys from the terminal.

You must remember that in Ontario the three major chain stores have some 68% of the business, but over the last 10 years that share has declined. We feel the market certainly helps in that regard, because it's a place where the smaller independent store owners can go to buy good quality produce at competitive prices.

Mr Frankford: So there is a strong countertrend to decentralization.

Mr Carsley: Yes.

Mr Jeff Wilson: I think that bears out the fact that different people want different things in their shopping patterns and habits. Some people want strictly price, and there are facilities and entities now being developed to deal with that, with minimal service, a little more effort required to purchase there, but substantial savings. It's just like the same types of options we had when we ate our lunch today: Some of us want to get in and out quickly; some of us want a nice meal. That reflects in the price we're going to pay all along the line and it tends to reflect in the types of businesses that are being set up to reflect the consumer demand.

Ms Harrington: I want to bring to your attention the Toronto Star. I just saw it during the noonhour. It's got a wonderful section about all the new fruits and vegetables coming on line here, and I just wanted to quote. "The diverse ethnic population, a growing nutrition awareness and our desire to enjoy new taste pleasures have brought the global market to our shopping basket." It goes on to explain how to use and how to eat these new things. So it looks like you do have a bright future ahead of you. I'll pass this around for anyone on the committee who's interested.

What we have to do today is resolve the statement you made at the outset this morning that you do not have the

power to run an efficient operation. We've heard a lot this morning about what not having the power means. I think you've explained that as much as you can. Are there other ways besides the Ontario-only question, which we've dealt with, in which you feel you are limited in your corporate decision-making? If we're going to look at the act, we have to have a whole list, not just of the Ontario-only question but other ways in which you feel your corporate decision-making is inadequate. Also, at the same time, we should be looking at any other new opportunities for moving your operation into the future that you'd like to be taking advantage of: changes, planning ahead.

Mr Carsley: Yes, there are other parts of our operation which would benefit by an updating of the act. We mentioned that we have put forward a draft of an updated act that covers most of the things our board feels are required. This has been looked at by people in the ministry on occasion, and the legal branch of the ministry found it to be acceptable and covered most of the areas we felt were lacking.

1420

Ms Harrington: But in what other ways do you feel your power is limited?

Mr Carsley: There are certain other things we can't do. This is a bit extreme, but we have lots of waste wood around the terminal, and say we wanted to go into business, a pallet repair operation. Theoretically, we couldn't do that, because our act doesn't allow for it. That's sort of an outside case.

There are certain fees we charge now that we don't really have the authority to charge. While this has never been challenged, we might have some difficulty getting it through the courts if it became a legal issue.

We can't license anything, for instance. If you've got our act there, it says we can raise money through issuing securities, we can raise money through rents, that type of thing. Bill, correct me if I'm wrong, but our powers are basically limited to those two things.

Mr Northcote: That's correct. To take an example of what you were suggesting, there is a legal difference between leasing premises and licensing premises, and there are some technical difficulties that arise from the way the farmers' market operates. The current practice is that if the person who has leased the premises doesn't show up by a specified time, someone else is permitted to use it on a daily basis. Legally, because of the board's limited powers, that could be problematic if anyone challenged it. It's clearly in the board's interest to have space that's not being used on that day to be occupied because that contributes to the vibrancy of the farmers' market. That's an example.

There are other examples of things that are not in the act and regulations and should be. For example, you mentioned the conflict-of-interest guidelines before, of which there are none at all. There are some matters relating to the way the regulations are prepared that interfere with the board's ability to police and operate effectively. The sections that deal with penalties for breaching the act by people in the terminal are such that the fines

are often so low that they're licensing fees in effect.

Ms Harrington: That's another question I wanted to bring up. Even if you had the legislation or the power, how would you actually ensure that your produce was, say, Ontario grown? I notice that in your lease you have a list of things people have to do. I just wondered how you enforced these.

Mr Jeff Wilson: One answer would be that one of the requirements to sell any produce in Ontario is to have the grower's name identified as well as the origin. I operate under the name Birkbank Farms, RR 3 Orton, Ontario. That has to be, by law, on every container I sell. But if, for example, I wanted to circumvent or abuse the system and decided to in my own containers put a product grown elsewhere that I may have got a deal on, just repacked it into my own containers, that's something the food terminal board itself has very little control over but something that inspection services within the Ministry of Agriculture and Food would take great exception to, because that is in contravention of its regulations.

Those types of things tend to crop up. We all hear terms like "whistleblowers." Well, we're all whistleblowers when it's in our own best interest, and the farmers operating out of the farmers' market are very quick to spot something out of the ordinary, especially out of season.

Ms Harrington: So you can ensure, generally.

Mr Cleary: In the last round, I was talking a little to Jeff about the inspection. Are there better ways than the way they're doing it now?

Mr Jeff Wilson: To answer a question with a question: What are we trying to accomplish? If the basic premise is that the product meets a declared grade, has all the requirements of source, country and grower origin, and we have a system in place that's giving us, through a representative model, that it is safe from pesticide residues or other phyto sanitary issues, which could be plant disease or plant insects, then what more do we really want? In other words, anything you want could be accommodated, but there is a balance: At what cost? We'll take 300,000 pesticide samples this year, and from what we've been determining from the various residue labs around, there's about \$170 cost per sample. It's proving, as many of us with a vested interest as farmers suspected but the regulators are finding as well, that we really don't have a problem out there, and if there is a problem it's identified and dealt with. The question becomes, we're expending a significant amount of resources into an area and are there better ways we could expend those resources? But anything could be accomplished. We could sample every load that comes in. It could physically be possible.

Mr Cleary: In other words, we could say that your board is satisfied with the way things are now.

Mr Jeff Wilson: The board as running an entity that really has no direct connection with these two issues of inspections, being pesticides and grade adherence. To a degree, the proof is in the pudding, as it were: We find that on balance, the product at the Ontario Food Terminal, in grade terms, is generally noticeably above the

declared grade. That's the competitive pressure of the marketplace.

By increasing over the last six years approximately a fourfold number of samples we're taking on pesticides, they're showing once again that the incidence of even pesticide detection is declining over that same period of time. In other words, we know more as growers about how we're managing the whole issue of pest management so we're doing a better job on the farms, which is translating all the way through.

For information purposes, in Ontario we have a grower certification program on pesticides now. We have 42,000 farmers certified. These are all contributing to—call it assuring the consumer, but assuring in a definitive manner that the food we're producing is safe.

Mr Ireland: If I could add, there are certainly areas at the federal level that I feel could be improved on.

Mr Cleary: That'll probably happen now.

Mr Marchese: Hear, hear, John.

Mr Cleary: Thank you. Another thing, and we got into it briefly yesterday out at the terminal, is the social contract. I didn't understand that we got a direct answer one way or the other about whether you will be involved. I think the figure was \$70,000.

Mr Ireland: We took the opinion that we don't get any government moneys, as was stated earlier, and we felt we shouldn't come under the social contract. As of now, of course we do. We have spoken with some of the other government agencies and had support from at least one, wasn't it?

Mr Carsley: A couple.

Mr Ireland: A couple agreed with the approach we had taken. We have sent in a response, our feeling about it. I've had a response from the Premier that he had directed it to the Treasurer, but we haven't had a response back yet.

Mr Cleary: It's your feeling at the moment that you will have to pay the \$70,000?

Mr Ireland: I'm assuming we do, but we don't agree with it. We feel we shouldn't come under it.

Mr Cleary: The next thing is producers. In parts of Ontario where I go they tell me that one of their biggest problems in being competitive is the minimum wage changing from year to year. Would you have any comments on that?

Mr Ireland: That was a question discussed with the Minister of Agriculture when he was at our convention last week. He understands our position; in fact, he's asked us as various commodities to give him some background data on what is happening to some of our commodities as a result. Particularly in one industry, one commodity, I just looked at the data yesterday and it was a 41% increase in our minimum wage over the last five years. There's also what's happening with our other costs, but our market revenues have not gone up accordingly; in fact, they've gone the other way.

1430

Mr Curling: I was going through the contract. I think it's section 3, or maybe there are others; I don't know. Is

that the area that says only food grown in Ontario?

Mr Carsley: Is that the farmers' market lease?

Mr Curling: Yes.

Mr Carsley: Section 4 indicates it should be Ontario-grown product sold in the farmers' market.

Mr Curling: Did I hear you correctly that there are those who have brought produce in from outside of Ontario, but that if you challenge them in court you could lose on this section?

Mr Carsley: That's right. We went to court and the injunction was given to the potato grower, Mr Grogenwagen, who challenged us. I don't have it here, but he got an injunction to continue selling the potatoes. The judge had a fairly lengthy description of why the injunction was given in his favour which basically indicates: "You, as a board, don't have the authority in your act nor do you have a regulation that pertains to this situation. Just because a bunch of directors got together and decided they were going to change the leases in 1975, that to me does not hold any water, because basically you're a creature of statute, a government agency, and this is not referred to in any way in your act or a regulation. Therefore, I am granting this particular grower an injunction." The board at that time never took it to trial because we thought we'd lose.

Mr Curling: When did you first put this case before the government? I presume it was a government before this one. How long have you been trying to have this changed?

Mr Carsley: I've been at the food terminal now for 11 years. The first time I went to visit the ministry with our chairman was about 1984, and he was pressing for changes then.

Mr Curling: Three different parties have had to wrestle with this, or ignore this, in some respects. In other words, in 1984 the Conservative Party was just about to give way to a good progressive government called the Liberals, and then after—

Mr Carsley: I'm just being facetious, of course, but I'm afraid the good progressive government let us down too.

Mr Curling: That's exactly what I'm saying. You took away my thunder. The progressive government didn't act on it, and now there's another government.

Mr Marchese: And then the good liberals came.

Mr Curling: And then the wonderful NDP came. There seems to be some reason government doesn't want to implement that. It's consistent among all governments. Is there something you could tell us to help this rather progressive outgoing government prevent this? There seems to be something there, though. When we speak to you, everyone wants to do this thing, but somehow it's not being done.

Mr Carsley: Clearly, what has to be brought forward is what we've been bringing forward to the committee: that this is going to help the Ontario growers who sell at the terminal. That is one of the reasons, and one of the other reasons is that the act is totally outdated. It is an act of government of 1946 and, as our lawyer just pointed

out, there's nothing on conflict of interest or anything like that in the act. It's very outdated. Times have changed, and a number of the things we do we don't even have the authority to do. We get away with them, seemingly.

If you want to have a document to support this in the House, we will write you one that will be ironclad, Mr Curling, let me tell you. No one will be able to turn it down.

Mr Curling: Oh, good. Maybe you weren't giving any of the past progressive governments that document. What you have just told me is why we should, but what I asked is that there must be a downside—I think Mr McLean asked before—and what is the downside on this? If we know the downside of making that change, we can start addressing that. Everything you told me points to the direction that it's old legislation and it should go; that we need something to protect Ontario growers and ensure they compete in a good environment and not have dumping etc, all those other things. But what I'm searching for is the downside, why it has not been proceeded with.

Mr Jeff Wilson: This isn't the first example where either provincial governments or federal governments have viewed an agricultural issue as being relevantly insignificant. We're dealing with a federal seed issue right now on crossbreeding and a cross-line of seeds that wasn't viewed as in the national interest and therefore was turned down at the Supreme Court.

We're at a point in time now, though, where—there was a question earlier on about minimum wage—issues affect farmers as well as other sectors, and we feel it's fully conversant that we accept there are issues out there that are current in how they've originated, whether they be trade issues, labour issues, what have you. Whether or not they're going to have a significant effect in aggregate, certainly they are going to have some effect. It's difficult to measure; I think we all have to acknowledge that.

What we're looking at now as a farm group is that this may not be viewed as a significantly interesting issue to Ontario society as a whole, but it's certainly an important issue to the Ontario farmers. It behooves you to consider this in that context. I would suggest the downside is just that: that it just isn't and hasn't been, through the various governments you've eloquently talked about, viewed as a provincially significant issue and therefore we really haven't dealt with it. But as all these other issues collectively come to a head, we're basically looking at, how do we position ourselves as having a chance to be competitive? You can't legislate me to be a competitive farmer, but you can provide the environment that if I'm efficient and do my job, I'm going to have a chance.

Mr Ireland: I'd just add that I don't feel the present board is afraid to pursue the issue. We're quite prepared to do that, but over the course of the past year we've kind of been—I shouldn't say discouraged, but looking at other avenues. There's a feeling that it may be a long, drawn-out process to try to change the act when maybe it's not a high-priority item for the government of the day to get it through the Legislature; that maybe an easier way to do it would be to try to get a change in the

regulations. But it doesn't appear at the moment that a change in the regulations is going to be the satisfactory way to go. Obviously, a change in the act would be the proper policy, to have in place for the terminal.

Mr Curling: If I should become the Minister of Agriculture, this would be one of my priorities. And don't you say anything.

Mr Murdoch: I'll be quiet.

1440

The Chair: We'll all try not to say anything.

Before we go to the next rotation, we do have a subcommittee report. Now that all the members are here, I thought we would do that little bit of business.

First of all, two reports are to be drafted tomorrow: the WCB and the Ontario Food Terminal report. If the committee is in agreement, we'll do them in that order: We'll start with the WCB in the morning, however long it takes, and then continue with the drafting of the report on the Ontario Food Terminal. The reason we need an agreement on that is that we will have to get our other researcher here to do the other report. Is that okay, that we do WCB and then the Ontario Food Terminal tomorrow? Okay.

The report of the subcommittee that met at noon is that we are sending a second letter to the Employment Equity Commissioner, Ms Juanita Westmoreland-Traore, to invite her to two days of her choice to be accommodated into her schedule, and we've asked for a response by noon tomorrow.

I think that was all we discussed at the subcommittee. If that's acceptable, I'm just giving that as a verbal report of the subcommittee that met at noon today. Are there any questions? None?

Now it's the third party's turn in the rotation.

Mr McLean: This is the third time we've reviewed the terminal: 1984, and we had another go at it two or three years ago. The first time, I remember, was the perpetual problem with regard to the units. We were going to build 10 more, and there was a lot of discussion around that. There was legal advice received by both the committee and the food terminal with regard to the suites there, that they were perpetual.

This is the first time I've heard that we've really gone in depth with regard to fruit and produce grown in Ontario. Perhaps it's some of the members of your board who have shown the interest and spearheaded the move to define produce that's grown. I don't know whether you've seen this paper, but I wonder if there's anything on that page that is grown in Ontario.

Mr Jeff Wilson: Yes. Collard greens, the kohlrabi, the oyster mushrooms, Jerusalem artichokes, bok choy. I think that's it.

Interjection: And shiitakes too.

Mr Jeff Wilson: Oh, I didn't see that.

Mr McLean: So there are several.

Mr Jeff Wilson: I personally grow several of them.

Mr McLean: That's good to hear. I was curious about that, because it's important we know that.

When we had a tour yesterday, I noticed only one of those units sold flowers. Would those flowers be imported or bought from local producers?

Mr Carsley: Some of the potted plants, that maybe you didn't see—they were down at the end of the unit—are all locally grown in Ontario greenhouses, like the daffodils and the tulips. At the front you would have seen some carnations, which probably were not locally grown because nobody in Canada grows those large carnations.

Mr McLean: Would the majority of the flowers that go to the terminal be grown in Ontario?

Mr Carsley: In the farmers' market, yes. Generally, we try to set the thing up so it's Ontario.

Mr McLean: Do most of the flower shops in the surrounding cities and towns come to the market to buy their flowers?

Mr Carsley: Some of the flower shops do, but they generally go to other wholesalers and get product delivered. The bulk of our trade for flowers are the greengrocery stores, who all sell flowers, and the convenience stores. They generally buy at the terminal because it's a better place for them to go as they also buy produce at the same time. But the flower stores as such generally go to where they sell them at the Dutch clock auction, which is the flower growers' cooperative, and as well as local stuff there, they also sell imported product.

Mr McLean: What is the flower growers' cooperative? Do they have a terminal or a warehouse?

Mr Carsley: It's a cooperative which is supported by the growers. At one time they sold mostly local product, but they now sell some imported product as well. It's an option, on the Dutch clock basis, where the clock starts high and then it goes down type of thing.

Mr McLean: Where is that?

Mr Carsley: Somewhere in Mississauga. Grace Dekker is our chairperson. You go there, don't you?

Mrs Grace Dekker: Yes, we go there.

Mr McLean: That's why I asked the question. There's so blooming many flower shops around, and I wanted to know where they all came from.

1440

Mr Carsley: It's quite a growth market, cut flowers and the potted plants, bedding plants as well.

Mr McLean: I have no further questions.

The Chair: Mr Marchese, you're going to clear up about yesterday, are you?

Mr Marchese: No. I won't comment on that.

There are two things I want to pursue. One has to do with the act again that I want to ask the board members. If changing the act is going to take some time—let's assume we're going to be doing that and that it will take some time—what would you propose in the interim that could be done as the government proceeds with looking at changing the act? I'm just putting a hypothetical case. What would you propose we do in the interim by way of regulation if we had to take it in those two steps? What do you propose we could do in regulations that would be useful to the board as we proceed to change the act?

Mr Ireland: These thoughts have been going through my mind as a result of this morning: If we pursue this avenue, how long a process are we looking at? What's the end result going to be? What do we do in the meantime? To my way of thinking, the question is: Can we wait? Do we have to do something in the interim while we wait for an outcome? I'm almost of the opinion that we have to do something in the interim while we're waiting. I don't know whether we can, as Bruce stated this morning, continue to bluff our way through. Maybe we can. The board would have to make the decision; obviously, I can't.

If we're pursuing the avenue of looking at changing the act, then I'm not sure whether we're going to go too far in terms of looking at regulation change to exhaust the other avenue; whether that's going to be feasible or not. We had several options we could possibly look at. I don't know. I get different ideas running through my mind, but it's very difficult.

Mr Marchese: You can reflect on it if you like; you don't have to answer it immediately. I'll ask questions about something else, and if thoughts come to mind about things that could be done in the next three or four months or six months, it would be useful to have your impressions as opposed to us on our own having to direct the government as to what it could do in the next five months. We're asking for your input. If you don't have any quick impressions or impulses or ideas about what that could be—

Mr Jeff Wilson: The dilemma we're facing—once again, my comments are as an individual—is that the Ministry of Agriculture and Food put together a regulation it felt internally could deal with the issue and ran it through the Attorney General's department. Their opinion was that it was full of holes, as it were. That keeps taking us back to dealing with it on an act basis.

In the interim, we've got approximately five individuals who are literally waiting to find out whether they can or they can't. They're also suggesting that the minute they can, they're going to document whether that is becoming an integral part of their business, to use, if this thing drags on over a significant length of time, as part of their argument that: "I've been doing this for the last 18 months, two years, three years, and it's such an integral part of my business now that you're going to force me out of business." They're quite open with us as board members individually on how they plan to approach this.

The dilemma we're facing is that if this discussion were five years ago, immediately after the last court injunction, possibly we could have resolved that by way of an interim measure, but we're literally coming up against a hard wall right now.

Mr Ireland: I would almost be of the opinion that if there were tenants just waiting to see what was going to happen, if they were pushing this now but knew that the board had pursued it and it had gone before the Legislature and it was at first reading or wherever, I would think they'd be more inclined not to push until they see what the end result was going to be. I'm not sure whether the board would have to. If we made the initial step as far as you changing the act, I'm sure they would want to sit

back and not push it too far until they knew the end result.

Mr Marchese: Obviously, the major one is the authority to restrict the sale of imported produce in the farmers' market. That's key. The other that one of you mentioned has to do with the fees you charge, fees or licensing, that is put into question in terms of your authority to do that. You're saying to both of these, which are major changes to the act, that you need to change the act. Are there things other than those that could be done by way of regulation in the interim that you would find useful? Are these the only ones that are important to deal with?

1450

Mr Carsley: We know we would have no difficulty with the registrar of regulations in changing our regulation 871, which is really the operational regulation, the one that states opening times and infractions for parking, speeding, that type of thing. That can be done without any change in the act, so that we can do. I don't think we need the committee's help on that particular one. But in terms of things such as charging fees, quite frankly, the registrar of regulations already turned us down on that by saying we didn't have any authority in our act to do that. We've been through that one.

Mr Marchese: But you're doing it. No one's questioned it, so it's not—

Mr Carsley: We do it and nobody's questioning it, but it's a very important source of income for us.

Mr Marchese: I understand that. Let me pursue the matter of regulation versus the act. As we know it, regulation has similar effect to a bill itself. Whatever you put in regulation has the similar effect of law as what you put into a bill. If you change the regulation, my view is that you could do what we need to do, as opposed to necessarily having to create an act for it. That's not your view?

Mr Northcote: No, it's not. It's not the view of the litigation counsel at our firm either, who incidentally was the counsel on the Supreme Court of Canada case in the 1960s. The concern arises from a technical difference as to whether or not this kind of matter has to be done in legislation or can be done in subordinate authority of government under regulation.

If the act itself said the board can make regulations respecting the sale of non-Ontario produce in the terminal, I'd be much more comfortable saying you could do that by way of regulation. Unfortunately, you can only have a regulation in respect to something for which there's a provision in the act that allows that power to be delegated. That's not in section 13, so we have real concerns about whether it would be effective to have it in the regulation.

In my view, if you put it in the regulation and then went back a year later and put it in the act, that's virtually tantamount to a concession that it wasn't properly in the regulation in the first place. I suspect that would call into doubt the acts that happened during that hiatus period.

Mr Marchese: I'm willing to accept that. I suspect

that's probably a matter still of legal opinion, opposed to anything that can be proven either way.

Mr Northcote: You're right. I think it is a matter of legal opinion. The Attorney General's office happens to agree with our opinion as well, so that caused me a lot of concern.

The Chair: Has that opinion been given in writing?

Mr Northcote: It's a very informal opinion. It's reduced to a memorandum, not a learned document, as it were.

Mr Marchese: I have a question on the leases. It's been asked already, and I realize it's a difficult one for you to answer and for us to deal with. How to come to terms with it, how to resolve it, is something that obviously has bedevilled many. I wanted to ask your opinion about the breaking of the leases, legal or otherwise. The government could presumably come to an agreement with these leaseholders by compensating them; buying them out, in other words. That's one way of doing it.

Mr Northcote: I personally have doubt that you could reach an agreement with all of them at a reasonable price, in which case you'd be forced to legislate it by way of expropriation.

Mr Marchese: And if you expropriate, you would have a legal battle there as well.

Mr Northcote: I'm probably not qualified to express an opinion on that. As you know, in Canada there's no protection of property under our Charter of Rights so therefore the Legislature can do anything it wants to do by way of legislation.

Mr Marchese: I'm trying to explore what would happen under the various scenarios we consider, because as we consider it we need to look at how it would affect the market. On the one hand, many of us disagree with someone having a monopoly on this; on the other hand, we understand why they did it initially in the 1950s. In order to move them, they had to grant them something, so they gave them leases in perpetuity. I don't agree with it, but I understand why they did it.

But if you want to break that, there is a problem in terms of what the fallout of that is. How would it affect the market? Would it affect the market? If those people were not to be there any longer, let us say, who would replace them? Would that be easy? Would that be difficult? Would that cause some instability in the market? Would it be good, bad, advantageous or not? These are the kinds of questions we need to resolve as we raise this issue. It would be irresponsible for us to simply say, "This is a monopoly; we need to break it down," and the consequences no one is considering. That's what we need to consider, and I'd like your opinion, if you have one, on the possible consequences of any course of action we would take on the market itself.

Mr Jeff Wilson: To answer that, you have to look at the composition of our board, which has representatives of farmers, buyers, the wholesale group, the general public, consumers, what have you. I would argue that's what makes that board work. If that board was just farmers or just wholesalers, you would have such a vested interest that every decision they made would be

slanted or biased in that direction so severely that they probably wouldn't stand the test of time.

Back when the market first moved to its present location, the farmers' market moved out either a year or two years previous to that and just about died. While at times as a farmer I don't always get along with the wholesalers and I question their motives, we have an uneasy but truce type of relationship because there are times they need me and, to be honest, there are times I need them, and that's what makes it work.

The buyers would suggest that if it were a fragmented system, overall everyone would lose. Right now, especially when we talk about the ethnic greengrocers springing up, they can go to that one end and source everything they need either directly from a farmer or wholesaler or that grey group in between. If that were fragmented and those people were out of there—

The other issue is the stability that exists in terms of farmers getting paid. That's becoming a significant issue in the province right now and they're looking at types of legislation to ensure that, but if the fundamental stability of a new tenant in there is at question, the spinoff is going to affect me in another detrimental way as a farmer.

While we don't necessarily always agree, we've learned to work together on this as an entity, for my benefit, for the wholesalers' benefit and, I would argue, for the consumers' and greengrocers benefits as well.

The Chair: Could we confirm who is who on the board? You have seven members. I think it would be good to know for the record, when you said you've got all this representation. Mr Ireland, you're a farmer?

Mr Ireland: Yes.

The Chair: Mrs Dekker?

Mrs Dekker: Farmer.

The Chair: And Ms Baltaz?

Mr Carsley: She's a public representative, representing the consumer of Ontario.

The Chair: Is she appointed?

Mr Carsley: She was appointed, yes.

The Chair: By whom?

Mr Carsley: By the Minister of Agriculture and Food.

The Chair: It's an order in council so her background is available. And Mr Brown?

Mr Carsley: He is a representative of the wholesalers. He used to have a business at the terminal but is no longer actively involved in a financial way, but he does represent the wholesalers.

The Chair: So he was a leaseholder and he sold his lease?

Mr Carsley: To his son. His son has taken over the business.

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The Chair: So he's a leaseholder through the family currently. And Ms Lahti?

Mr Carsley: She's from the public.

The Chair: Appointed by the government?

Mr Carsley: Yes.

The Chair: And Mr Rundle?

Mr Carsley: He's a buyer. He is a grower, but he is a buyer as well, so he acts as the buyer representative.

The Chair: And Mr Wilson?

Mr Jeff Wilson: I'm a farmer.

The Chair: Sorry to interrupt, Mr Marchese, but it's important, because we've never actually done that.

Ms Carter: You've raised the question of conflict of interest not being dealt with in the act. Could you say more about that?

Mr Carsley: At the last meetings the board had with the committee, conflict of interest became a very large issue. It was the opinion of our legal counsel at the time that in certain matters there really wasn't a conflict of interest. In essence, at the time the whole board was made up of people directly involved in the market, and the committee made a recommendation that there be people appointed to the board from the general public and that sort of thing, which of course the minister did follow.

The makeup of the board has changed, but it depends on how you look at it, I guess, about whether there was really a conflict because this was a working board, and from day one the board members had been people who were generally involved in the market so anything they voted on which pertained to the market one could have looked upon as being a conflict, which is really not the case. If you have a working board that is involved in the operation it's representing, they can't help but vote on things that someone might view as a conflict.

What we're getting at is that we, board members and our lawyers especially, would like to see conflict-of-interest guidelines apart from the guidelines expressed by the government; a comprehensive set of conflict-of-interest guidelines, either in one of our regulations or in our act, that spells it out very specifically, as you would have for a private business, say.

Ms Carter: So you'd know where you stood.

Mr Carsley: Exactly.

Ms Carter: Obviously, there are similar organizations in other jurisdictions, Europe or the States or whatever. How do they compare with the Ontario Food Terminal? Are there some which are privately owned? Are they publicly owned? Are they comparable in other ways?

Mr Carsley: There's a market system right across North America and Europe and South America somewhat similar to what we have here. Some of them are private and some of them are public. It all depends on the jurisdiction and how the market came about. At one time I think the government here would have been quite happy to have this market develop on a private basis, but no one was interested. In some jurisdictions, it has worked that way, where private people have gotten together.

There's an advantage in some respects in having the government involved, because there are certainly some markets in the States which have been taken over by, and I don't mind saying it, rather unsavoury people. Having

the government in the act, Big Brother is watching, so to speak.

There are a number of things we do in our market that people come and look at, the way it's been financed and the way we operate. We have people coming from all over the world to look at us, who are now operating much larger markets than ours, but they look at it from the point of view that we seem to have a good reputation for the way we're organized and that sort of thing.

Ms Carter: So you are perceived as being the model, rather than somewhere else.

Mr Carsley: We'd like to think we are. Certainly we have lots of delegations from all over the world coming to see us.

Ms Carter: Do you go and look at others?

Mr Carsley: My associate, Bruce Nicholas, is a director of the market managers' association, and he's probably better able to speak about other markets than I am because he's seen most of the markets in the States. But I think I'm right in saying that we are one of the, shall we say, leaders in certain areas in terms of whole-sale produce markets.

Mr Nicholas: We basically lead the pack as far as people in the produce business are concerned. The structure of the market has been copied in Australia. People have looked at that parking deck over the farmers' market as an innovative way of taking care of the farmers and the cars. Our central cold storage is unique; it maximizes the use of the facility. Nobody has a farmers' market like ours. Actually, ironically enough, we get more appreciation from out of the country than from within.

Ms Harrington: If there are other similar markets, what about their legislation? How is their framework? You say you're not enabled to do your job properly, not empowered to do it properly because of the legislation. In Montreal or Canadian cities, how does their legislation work?

Mr Carsley: Montreal is a private market. It has one major shareholder and then about 500 smaller shareholders, yet the land is owned by the municipality. I honestly don't know if they have any legislation, to be honest with you. I haven't seen anything.

Ms Harrington: What about the American counterparts?

Mr Carsley: Many of the American ones do have legislation in terms of the way they're set up. I'm going to defer to my colleague, but I don't think any have as definitive a legislative setup as we do. Maybe Bruce would like to comment on that.

Ms Harrington: Maybe they have more modern legislation.

Mr Nicholas: I'm not that familiar with the specific legislation. There are state systems in most of the eastern seaboard states, Florida, the Carolinas and Georgia, that have farmers' market systems. The specifics of how they treat origin of product within their legislation I'm not aware of, but one of the things that makes this market different from the American markets is that this is a strict

wholesale market only and the American markets are basically combinations of wholesale-retail. Some of them do wholesale in the morning and retail later.

That's one of the major differences between our market and the American markets with this growth of the small independents, because our system of being wholesale fosters that independent trade that creates all that employment and all those jobs, whereas there there's more retail. I don't have the specific answers, but they'd be available; any of those states could provide them.

Mr Jeff Wilson: There are two additional points, the first one being that we are hosting an international meeting of market operators in May this year in Toronto, and that will certainly be one of the items we'll be discussing. But pertaining to the US, they integrate a little more their marketing legislation into how some of their terminal markets operate through their state marketing orders, whereas we have no liaison here in Ontario with our counterpart here, which would be the farm products marketing legislation. We've never explored any type of linkage with that. But a US state marketing order is similar to a marketing board decree here in Canada as to what you can or can't do in terms of selling generically within that state for that particular commodity.

Mr McLean: I have a supplementary on the question to do with conflict of interest. I'd like a clarification. It appears to me that most of your members are involved within the food terminal; there's probably one of the consumer groups on. Has anybody ever had to declare a conflict of interest on the board?

Mr Ireland: Not as long as I've been there, upwards of two years. We're all aware of the guidelines put down by the ministry under the memorandum of understanding; everybody's read them and we've discussed it, and to date anyway, no, it's never been declared.

Mr Nicholas: Mr Ireland is right: For the term of this board we really haven't had a conflict. But if a situation arose where a member had a specific issue related to their business, they would declare a conflict; ie, something to do with their lease or some such thing. It hasn't happened with this board so I'm not contradicting the chairman, but in prior boards if an issue came up, they would declare a conflict.

Mr McLean: So it has happened.

Mr Nicholas: Yes, it has.

The Chair: We've completed the rotation. Are there any other questions of the board members and the staff?

We'd like to thank the representatives of the Ontario Food Terminal for your appearance here today. We will be drafting the report, as you've heard. We do that in camera, don't we?

Clerk of the Committee (Ms Lynn Mellor): No, it's on the record.

The Chair: All right, the drafting of the report will be on the open record.

Mr McLean: On a point of order, Madam Chair: Would we be able to get a copy of what they're going to draft by 10 am with regard to the concerns they raised that they wanted us to look at?

The Chair: That who has drafted?

Mr McLean: That they're going to draft about the changes they wanted in the legislation.

Mr Carsley: I think we can get something for you, yes. We do have a draft of the act, and while it may not be perfect and may not be ready for complete presentation, it would at least give you an idea of what we're looking at.

Mr Ireland: You want this by 10 o'clock in the morning, Mr McLean?

Mr McLean: I was hoping we'd be able to have something we could include in our report, a recommendation we could put in our report that such-and-such should take place, as recommended by the board.

Mr Ireland: What if we took that revised copy Bill is referring to and highlight the areas we want to concentrate on?

Mr McLean: And the draft of the change you want.

The Chair: You could fax that to the clerk's office. Thank you for your attendance today.

Are there any questions of the committee members? We'll deal with the WCB draft first thing at 10 o'clock tomorrow morning.

Mr Ireland: Madam Chairman, I'd just emphasize that we do appreciate you taking the time to come down to the terminal yesterday. Please keep in mind about coming back and visiting again at some point in the spring, when the weather gets better, and see it when it's at full activity.

The Chair: Thank you for that invitation.

Mr Marchese: Only if we get a basket of these exotic things. Otherwise, we're not going coming back.

Mr Ireland: As long as they're grown in Ontario. The committee adjourned at 1512.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

- ***Chair / Présidente:** Marland, Margaret (Mississauga South/-Sud PC)
- ***Vice-Chair / Vice-Président:** McLean, Allan K. (Simcoe East/-Est PC)
 - Bradley, James J. (St Catharines L)
- *Carter, Jenny (Peterborough ND)
- *Cleary, John C. (Cornwall L)
- *Curling, Alvin (Scarborough North/-Nord L)
- *Frankford, Robert (Scarborough East/-Est ND)
- *Harrington, Margaret H. (Niagara Falls ND)
 - Mammoliti, George (Yorkview ND)
- *Marchese, Rosario (Fort York ND)
 - Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
 - Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Abel, Donald (Wentworth North/-Nord ND) for Mr Mammoliti
Murdoch, Bill (Grey-Owen Sound PC) for Mrs Witmer
Lessard, Wayne (Windsor-Walkerville ND) for Mr Waters

Also taking part / Autres participants et participantes:

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC)

Clerk / Greffière: Mellor, Lynn

Staff / Personnel: Richmond, Jerry, research officer, Legislative Research Service



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Thursday 27 January 1994

Journal des débats (Hansard)

Jeudi 27 janvier 1994

**Standing committee on
government agencies**

Draft reports

Workers' Compensation Board

Ontario Food Terminal Board

Chair: Margaret Marland
Clerk: Lynn Mellor

**Comité permanent des
organismes gouvernementaux**

Rapports préliminaires

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 27 January 1994

The committee met at 1014 in the Superior Room, Macdonald Block, Toronto.

DRAFT REPORT

WORKERS' COMPENSATION BOARD

The Chair (Mrs Margaret Marland): I'll call to order this morning's meeting of the standing committee on government agencies. The work before the committee this morning is to give direction in drafting two reports: The first report will be on our review of the Workers' Compensation Board and the second report will be on our review of the Ontario Food Terminal Board.

You've been handed out this morning from our research officer—this actually says it's been prepared by Rob Nishman.

Mr Lewis Yeager: That's right.

The Chair: Perhaps, Lewis, you would like to take us through this report, or we can ask the committee how it wishes to deal with this report.

Mr Yeager: Should I explain it first? This is the original briefing report that our branch provided to the committee before the hearings took place last fall. The first half of it is basically factual background information on the board and how it operates. The second half was a discussion of several issues that had been raised in recent times, with some possible questions that members might have wanted to pursue at that time. As is always the case, there were many other areas that were probed during the hearings.

Traditionally, when I've put together a report on an agency, we've used something like this as the framework to begin with, perhaps updating the factual part, which is the first half, and then using the second-half issues to encompass the positions of the members of the committee, working both from Hansard and from the information you can give me now. We can add in other issues that arose during the hearings. I'm entirely at your disposal. But to go through this report in its present form, it's essentially the briefing paper that you were working from at the beginning of the hearings.

I would suggest perhaps that in the comments and queries section in the table of contents we look through the issues that were initially suggested and discuss whether or not we want to pursue those and amplify them in the report. Perhaps each of you could give me direction on areas you would like to emphasize for each of these topics, and we can add in any additional topics.

I'll need some guidance on recommendations. I'm a little unclear whether the committee will wish to put together a consensus report or a report that's substantially consensus with perhaps some additional opinions appended.

That is the first type of thing we have to address, sort of the thrust of the report that I'm going to write, and then the factual content that's going to be covered in it.

From that, I would like suggestions on areas you would like specific recommendations on. If you have formulated recommendations already in your caucuses or as individuals, I would welcome any of those, and if there are other areas where you'd like me to suggest possible recommendations that fall out of the Hansard discussions earlier, I would be happy to do that as well. I'm at your disposal on how you would like to proceed.

Mr Allan K. McLean (Simcoe East): To shorten the process, the government members probably have some direction they would like to see the report take. I have some suggestions and perhaps the Liberal member Mr Cleary has some suggestions. Maybe we can start with the government's suggestions and go around. Then we could indicate what we feel should be in the report.

Ms Sharon Murdock (Sudbury): Actually, having attended at the sessions, we did sit down and work out some things and listen to what was being asked and the concerns of the committee. If I might, maybe it would help Mr Yeager that one of the first things was that the memorandum of understanding with the Ministry of Labour was discussed; I believe it was with Mr Mahoney.

There was accountability of the Workers' Compensation Board—I'm just looking at it in terms of broad subject areas—to anyone in terms of both policy development and principle of value for money. There was fraud: The issue was definitely discussed. There was controllership of the Workers' Compensation Board's internal controls, there was strategic planning and how that's working. There was vocational rehab and return-to-work concept. Of course, there was the whole issue of Simcoe Place, the building. There was the corporate culture in terms of what the action plan is, as Mr Di Santo had stated in his presentation. Last was the funding strategy, which is the big issue of the day in terms of assessment ratings.

Mr Rosario Marchese (Fort York): Ms Murdock just mentioned the list of things that we would be speaking to. Perhaps what she could do is speak to each one and we can debate each item that we have, as opposed to going through the whole list, because it's very long. We can go through each one, and if there are additions or changes, people can make them. If there's agreement, we can move on to the next.

The Chair: Is that agreeable to the committee? Okay.

Ms Murdock: The Provincial Auditor recommended in his report that he expected that the Workers' Compensation Board should have a new memorandum of understanding with the Ministry of Labour which would clearly delineate the power of the Workers' Compensation Board and provide an accountability framework for decision-making. We're in accord with that. We think that is a wise decision. So it would make sense to have that as one of our recommendations, I think, but to be open for discussion of course.

In terms of the accountability issues, all of us were, I believe, if my memory serves me, unanimous on the committee that the Workers' Compensation Board cost any new policies that it was putting forward in terms of implementation and then that there be some accountability to ensure "economy, efficiency and effectiveness"—I think that's a quote—"in service delivery to both the workers and the employers."

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Then one of our recommendations would be, "All new initiatives in policy development and program delivery undergo rigorous scrutiny to ensure clear objectives and built-in controls prior to implementation." That would be one of the recommendations we would be seeking.

Secondly, the committee would recommend that, "The WCB enshrine the principle of value for money into the development and delivery of all programs. Furthermore, the WCB institutionalize the idea of good spending by establishing management responsibility for reporting performance, plans and budget and conducting regular reviews to ensure adherence to stated objectives."

The Provincial Auditor's report also suggested a value-for-money consideration—look at everything it does in terms of a value-for-money principle. We agree with that.

Mr Marchese: Madam Chair, perhaps we might stop there and see whether there are comments.

The Chair: Good idea. Other comments?

Mr McLean: Does the value for money that you're talking about include the 90% they get with regard to payments? There are some cases where I believe they would get more in payments than what they were making on the job. Is that value for money?

Ms Murdock: The benefits packages to employees would come under your policy review. If the policy of the board and the legislation say that X is to be paid, then that's what they do. For instance, they purchased all the imaging equipment a number of years ago. I guess it was in 1987 or 1988 they purchased all this imaging equipment, massive amounts—each terminal cost something like \$18,000; it was very, very pricey—without looking at whether or not the whole business could even take it in or whether or not the employees were ready for that kind of equipment, whether training had been done and that kind of thing.

I'm not an accountant and I don't know exactly how value for money works but just on a commonsense level it would be every single thing. The process that's used within the organization would have to be looked at in terms of whether you were getting the biggest bang for your buck.

Mr McLean: Would it include the value-for-money auditing and internal spending controls?

Ms Murdock: Yes, but I'm probably speaking more to what you're talking about in terms of what I'm calling the controllership of the changes in the Workers' Compensation Board, which is another subheading.

The minister's assistant just gave me some information. I did mention that the legislation controls basically how you're going to run that, so benefits is legislated, so that would not come under value for money.

Mr Marchese: Is there a sense of time lines that you would want to include in this? Is there a reasonable time line by when we might expect the board to institute these good practices?

Ms Murdock: Yes. They have an action plan which was presented and submitted to this committee. The board has already instituted the action plan that it has, long-range planning.

Mr Marchese: It says here: "Furthermore, the WCB institutionalize the idea of good spending by establishing management responsibility for reporting." I assume they are not doing that.

Ms Murdock: Yes. Prior to the action plan being put into place there was much not being done.

Mr Marchese: Right. So if we want them to institutionalize these good management practices, do we have a sense of when we would like them to do it for, a year?

The Chair: Mr Yeager is wondering, Ms Murdock, if we could have a copy of what it is you're working from so he doesn't have to copy all these notes, and Hansard would too.

Ms Murdock: I don't have any more. Can you get me some more? We didn't know you were going to ask us so directly.

The Chair: It probably would be helpful for everybody to have it and then there's less repetition. That way we can move along more quickly.

Mr Marchese: I'm just wondering whether you would want to put a time line as to when we might expect these practices to be in place, whether one year is reasonable or six months or longer.

Ms Murdock: I can't remember what the frame of the action plan is. Is it five years, Don? You've got to remember that it's an 80-year-old institution that is trying to change direction in a short period of time. It's already changed.

Mr Marchese: This would be in the five-year plan, in other words. Is that the idea?

Ms Murdock: Yes, it would be within the confines of the action plan.

The Chair: Any other questions on that point? Ms Murdock, would you like to move to the next point?

Ms Murdock: I've forgotten where I left off.

Mr McLean: Principle of value for money. You're going into fraud next.

Ms Murdock: That's right. Thank you. I started and then Mr Marchese suggested we stop there.

Just before I get into the fraud issue, I should point out that when Mr Di Santo and Mr King were appointed to the board in May 1992 there was only one person designated in the entire board who would look at any kind of possible fraud, one in the department. Since that time, since they came on line, with Mr King as the operational manager, they have hired 35. As a consequence of that, they have found that there has been fraud not only from the employer side and the injured worker side, but also from those who provide support staff such as pharmacists, doctors, rehab specialists and so on.

I must admit that they are really working hard on that and they have caught out, I would say, large-scale operations in a couple of instances. They are already working on that and I think Mr King made it pretty clear when he was in here about how much work they have already done in this area. That's why we're writing that the committee would like to have the board "continue its excellent efforts to prevent and detect internal and external fraud."

"The committee expects the Workers' Compensation Board to immediately find ways," and I emphasize this, "to tighten controls on access to Workers' Compensation Board systems." The two areas that are mentioned here, this one, the tightened controls on the access to the Workers' Compensation Board systems, and the high-risk areas of business, are basically two areas of weakness that so far have had very little done.

"More research is needed to identify those high-risk areas of the business and ensure that close monitoring and tough anti-fraud controls are put into place." There hasn't been that in the past, so I think it's fair that this committee should say that's what we want them to do.

1030

Mr McLean: What do you mean by access to WCB systems and high-risk areas of business? What's your definition of that?

Ms Murdock: Of high-risk areas of business?

Mr McLean: Yes. Mining, lumbering?

Ms Murdock: No. High risk in terms of fraud and not high risk in terms of accident experience.

Mr McLean: Okay, fine.

Ms Murdock: The next subject area we looked at was controllership, which basically flowed exactly from what the Provincial Auditor recommended in his report and what he was talking about in terms of controllership.

"The WCB's internal controls have not kept pace with the rapid technological changes in the workplace. The presence of fraud in the system, in part, points to the weaknesses in the Workers' Compensation Board's internal controls." I'm on page 2, top of the page. "The board must address this situation by developing a controllership function to provide its employees with clear roles and responsibilities and assist managers to minimize waste and prevent fraud."

"A controllership function needs to be put in place to strengthen the efforts of the Workers' Compensation Board to deliver efficient and cost-effective service delivery. To this end, all employees must understand the values and core beliefs of the organization. Well-defined control activities, such as authority and approval limits, must be in place. Systems must be in place to provide operational and financial compliance-related information. Above all, the controllership function must ensure a proactive approach to remedy system weaknesses and allow for fast corrective action."

I should suggest here too that "controllership" is the new working word of the 1990s in terms of business management, but basically it's making sure that you have a system in place that will ensure you're not overspending your budget, that if you can get it cheaper, you will

do that, that there are mechanisms of control along the way so that you don't go out and buy huge rooms of art without some kind of checkups along the way.

The Chair: Any comments on section 4, controllership? No questions. Okay, strategic planning.

Ms Murdock: Strategic planning is something that actually has been discussed in two other committees and was presented here, but not a lot of time was spent on it.

"Crucial to the planning for the future and ensuring the viability of service to its clients is a strategic plan. The WCB board of directors"—I would point out that the board of directors right now is a bipartite board—"will shortly begin consultation with its stakeholders on such a plan. The committee expects the Workers' Compensation Board to keep the committee updated on its strategic plan addressing the challenges facing the compensation system in Ontario now and in the future."

Obviously, the employer groups and the employee groups or the injured workers' groups are the stakeholders in this and they should be talked with in terms of determining how they're going to proceed at the board. I know that the consultations are going on in other areas as well in different subject areas as they go along, but this is looking at how the board is going to operate over the next few years.

Mr Yeager: I was wondering if you were proposing a specific mechanism by which this committee would be kept updated on the strategic plan developments. Would you like a recommendation in a general form like this or would you like to specify some sort of process?

Ms Murdock: I sat in in the last session when the entire upper management staff of the Workers' Compensation Board was here for the whole week, and I believe the comment was made that you wondered how much work was getting done at the Workers' Compensation Board because they were all here. They've been at two other committees for lengthy procedures as well. I would just say that the three committees that can hear them have heard them now and it would be nice to give them some chance in order to do some work.

If the committee is recommending a time frame that they report back, maybe they could do interim reports on a regular basis, but I personally would not agree with a recommendation to have the directors come in here, say, every six months. I wouldn't think that would be functional, but I think a written report submitted to the committee probably would be. I don't know how the committee wants to handle that.

The Chair: When would you want the written report? Are you proposing a time frame to respond?

Ms Murdock: That's what Mr Yeager's asking me.

The Chair: I know. I'm asking you whether the committee wishes to give some direction for a response from the board.

Ms Murdock: Obviously.

Mr McLean: It doesn't really matter, Madam Chair. What we do here is we make recommendations in our report. It goes to the board. It's up to the board to do what they like. They don't have to report back to us if

they don't want to. All we can make are really recommendations, in my opinion. If there's something different than that, I'd like to know.

Ms Murdock: I don't know whether I agree. I know that the present administration takes these committees very seriously in terms of what they're recommending. It's worked out that so far what the committee wants to do and what the board is trying to do are in sync, but it's the time frame. We'd like to have it done yesterday, and it just will not happen that way. I think we have to allow them some time. I'd suggest a year. I'm open to any suggestions from the committee members as to time frames.

Mr McLean: That would be a minimum.

Mr Alvin Curling (Scarborough North): You say it would take a year to respond to any recommendations, from the Workers' Compensation Board?

Mr Yeager: The suggestion, if I've copied it down correctly, is that related to strategic planning, the WCB might be asked to provide this committee with an annual written report of its progress in succeeding with its strategic plan objectives.

Ms Murdock: That sounds fair to me.

Mr Yeager: Sort of a letter outlining perhaps the aspects of the strategic plan and progress in each area.

Mr Curling: You're asking if a year is adequate?

Ms Murdock: That's what Mr Yeager was asking me, what time frame we want, and that's what the committee is supposed to decide. I'm suggesting a written report to let us know how the strategic plan is working.

Mr Marchese: Isn't that part of the annual report?

Ms Murdock: That's right, because the strategic plan, which is going to be worked out, will no doubt be included in their annual report, but I don't know whether that's sufficient for the purposes of this committee.

Mr Curling: I don't know. We've gone through this extreme exercise on the Workers' Compensation Board and then you say we've got to almost regiment it back to an annual report now. They can state their progress through the annual report thereafter. Don't we want a quicker response at the initial stage on where it is at?

Ms Murdock: You know how this place works, Alvin. It'll be six months before it even gets there.

Mr Curling: I don't know how it works; that's the problem. No, I agree with you. I think it will take some time. If the consultation process is just going to start, then by the time they get that together it will take about a year to really put it down. I agree with that.

Ms Murdock: Okay.

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Mr Curling: If we go back to the strategic planning, you are saying then, in the third sentence, "The committee expects the WCB to keep the committee updated on its strategic plan addressing the challenges facing the compensation system." Is there any update before the time for the strategic plan coming about, in other words, to keep the committee updated on the strategic plan addressing the challenges? So you're saying, first, to put a strategic plan in place, which would take a year. It

would take about a year before they get that done.

Ms Murdock: They have already got their action plan set up as to what the board wants to do operationally. Then in terms of the strategic planning of ensuring service to both employers and employees, they have to set up that part of the strategic plan. The idea came when I listened to you speak that once they get the strategic plan set up with their stakeholders, then they could send us a copy of it. They could keep us informed that way. We can sit here and say in six, eight, 12 months, they'll have to notify us. I don't know.

Mr Curling: We can sit here and say a year or two. I really don't know. Would the strategic plan be ready within a year, or can it be ready in six months and then a report of how the strategic plan is going annually?

Ms Murdock: Okay, I see what you're saying. The other thing too is that given we don't know how long it's going to take the stakeholders to figure out their own strategic plan, it would make sense then that the committee be notified by the Workers' Compensation Board when the strategic plan is ready, with a copy to the committee. I would think that within a strategic plan the stakeholders would have set up their own time frame. Then we can determine, as a committee, what kind of reporting, if any, we need to have done after that.

Mr Curling: I can go along with that. I can go along with the fact that you said: "First, I can't determine when they'll have the strategic plan. I don't want to say a year. I don't want to say in six months it'll be ready, then we start to pace it." They'll set their pace and say, "These are the things we will do, as stated in our strategic plan, our time frame." But what I was hearing before is that in a year's time the strategic plan will come.

Ms Murdock: They could have a strategic plan ready in a couple of months, for all I know.

Mr McLean: Are we not making some recommendations that Mr Yeager can take, and when he hears from all parties, make some recommendations back to the committee at another date? You're going to formalize what these recommendations are and then you're going to report back to us, to deal with them one by one again.

The Chair: What we're dealing with this morning is giving direction to the researcher to prepare a draft report that the committee will then respond to.

Mr Yeager: My proposed plan would be to take the recommendations and the comments today and take information from Hansard and other sources and frame a discussion around those from what people's comments have been. Then we can take a subsequent look at it and focus in more clearly on it. But I'll try to take this and use it as a framework to beef up the whole discussion leading up to these points.

Ms Murdock: Okay. Number 6, vocational rehabilitation and return to work: I stated earlier that the board operates on a bipartite basis right now. It was a unanimous decision by both employers and employees that the earliest possible return to work for the employee was in the best interests of the employee and of the employer. I think that was stated here in the presentation by the board and the questions in the summer.

I thought one of our recommendations would be that they maintain that focus on the voc rehab and return-to-work concept. I'm not reading it all, obviously; I'm summarizing what it says there. Unless you want me to put it on the record.

The Chair: That's up to the committee. Do you wish Ms Murdock to read it? Are there any questions?

Ms Murdock: Mr Yeager has it.

The Chair: Mr Yeager has a copy of it. All right, so we'll go to corporate culture, number 7.

Ms Murdock: The action plan teams, in responding to the recommendations of the chairman's task force, began a process which for the first time saw the employees being involved and empowered in the key decision-making. That's still in the works; it's still in the process. I still think it has some work to do in that area. The example that was used when Mr Di Santo was here was that it was formerly a pyramid and he wanted to flip the pyramid over, so that in terms of how things were done within the board, you would have more input from the front-line workers. We should recommend that this should be an ongoing commitment on the part of the board to continue in that.

The Chair: He wanted a pyramid, not a triangle.

Ms Murdock: No, he called it a pyramid. He wanted it a flipped, upside-down pyramid, and obviously to continue the training, service delivery.

The Chair: If he wants the input from the base and the grass roots, I think it would be a pyramid in its normal position.

Mr Donald Abel (Wentworth North): Do you think it really matters?

Ms Murdock: It doesn't really matter.

The Chair: Once you use an example, we better all understand what the example means. It does matter.

Ms Murdock: The decision-making is made by the employee group and filters down, instead of the reverse where some power on top makes—obviously you have to have a final arbiter—all of the decisions and then you had better abide by them.

The Chair: Number 8, Simcoe Place.

Ms Murdock: This was a heated discussion in both committees that it was discussed in. Some members expressed concern about the decision of the WCB to relocate. "The Provincial Auditor...directed the WCB to report back in 1996 with detailed information on all costs associated with the relocation." He included a very lengthy list of "final rental rates and annual costs; total staff that are relocated; space occupied; projected rate of return on investment based on actual building costs; moving costs; leasehold and furniture costs; and any administrative savings that have been achieved by the relocation and consolidation of the head office, such as staff reductions."

Mr James J. Bradley (St Catharines): The horse will be out of the barn by then.

Ms Murdock: He also "directed the WCB to assess long-term staffing projections in light of savings possible from reduced claims, downsizing and automation, and

determine the effect this may have on reducing space requirements." We're recommending that, "The committee agrees with these recommendations and expects the WCB to comply in full."

The Chair: Could I ask for clarification on this?

Ms Murdock: I copied that right out of the Provincial Auditor's report.

The Chair: Okay. I just want to be sure that is accurate, because I'm not sure that it wasn't a resolution of the standing committee on public accounts that Simcoe Place would be looked at again in 1996, and maybe the ministry staff can clarify that. I think it was a resolution of the committee that the next time Simcoe Place would be looked at would be 1996 and here it attributes that decision to the auditor. I'm not sure that is correct.

Ms Murdock: If I may, Don Eady, the minister's policy assistant.

Mr Don Eady: The auditor himself recommended that the WCB return in 1996 with reports on those sorts of things that were stated there: rental rates, actual costs, that sort of thing. Then, if you recall, the public accounts committee voted to adopt that recommendation, which was taken out of the Provincial Auditor's report, so the auditor said the WCB should come back in 1996 and then the public accounts committee voted also to adopt that recommendation that the WCB come back in 1996.

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Mr Curling: Why are we doing this? The fact is, what if in 1996 we found that the WCB wasn't financially feasible and all of these types of things? Are we going to get the money back? The building is going up; the thing is being done. Then you say: "You know what we should really do? We should assess the moving costs"—we have moved already—"the building costs"—we have done the building already—"the leasehold and furniture costs"—we have bought them already—"and the administrative savings"—we didn't save.

Then you say this is 1996. So big deal, what are we going to do with it? Why are we going through the motion of saying, "You know, we should do that"? It's normal that the auditors go in and do an assessment of these agencies all the time and come out with that. Why then tell them: "You know what we should do? In 1996, we should check whether this move we're doing now is feasible or is economically sound?"

The Chair: I only raised the question for accuracy, and obviously Mr Yeager can confirm what the resolution of the public accounts committee was. I think that should be part of Mr Yeager's comments back to the committee. I'm only raising it because I was a member of that committee when that vote was dealt with and I just wanted to be sure that this was accurate. That was all. I'm not debating it.

Mr Eady: I'm not debating it. Just to clarify, the auditor made a number of recommendations in his report, such as the memorandum of understanding, which was covered earlier, that the ministry and the WCB should conclude or negotiate a new memorandum of understanding. He made a number of other recommendations in terms of accountability and then one of his recommenda-

tions was the return in 1996. Both the ministry and the WCB have said all along that they were willing to comply and are complying with those recommendations from the auditor's initial report.

The Chair: In any case, there was a decision made by the public accounts committee that it would not be discussed again until 1996.

Ms Murdock: On that point, one of the reasons we put it in here was because it was discussed. We spent a fair amount of time in this committee discussing it, so I thought it should be included in our recommendations. But in actual fact, since it's already included in another committee, the specific issue doesn't even have to be here. It's already being covered in another committee. It doesn't have to be covered by this committee as well. It's duplication of effort, I think, on everybody's part.

The Chair: The decision to review the WCB was a decision made by this committee after the public accounts committee had dealt with that motion, so if this committee chose to do the review, the review is open to any aspect of the WCB.

Ms Murdock: Yes, I know.

Mr Bradley: I just consider it almost pointless to go through this process after the building is built and so on. I mean, it's done. The best you're going to be able to do is wag your head at the end of it and say, "Isn't this awful?" But this all should have been done before the building was constructed. This is hopeless. I don't know if the auditor's time might be spent doing something else, once the building's built. That's the problem; you have to get these before they happen. Once it's up there, it's up there.

Ms Murdock: So are you recommending that he not?

Mr Bradley: If you people want to do it, that's all well and good.

Ms Murdock: That's fine. We can eliminate that whole section.

Mr Bradley: I'm prepared to go along with it, but I'm saying it isn't worth a damn.

The Chair: The point is, if I may say this as the Chair, we can only give direction on this committee as part of your report. The decisions of another committee are not before this committee. The decisions of the public accounts committee have been made and they involve this review, so it's a matter you're free to comment on however you wish, but you can't control what another committee has decided to do, and that is, take this direction.

Ms Murdock: Obviously, we had no concerns about it being looked at by another committee; otherwise it would not have been included as one of our recommendations.

Mr Yeager: I'm a little unsure what my direction is on this. Shall I complete a discussion of Simcoe Place in the report or delete it? Would you like this discussion, perhaps the very discussion we've had today, put in as a section?

Mr McLean: I think we should have a complete audit on the whole building after they've moved in and find

out really what the cost was of the furniture, what the cost was of all this stuff. I think that's a good recommendation, to have that.

Ms Murdock: So do we.

Mr McLean: Whether they do it or not, who knows, but at least it's some direction.

The Chair: Are you saying that you simply want a copy of the report that goes to the standing committee on public accounts?

Mr McLean: No. What they're doing is making a recommendation that the auditor directed the WCB to assess long-term staffing projections, utilization, cost reductions, downsizing and automation, which is something they should be doing anyway.

Ms Murdock: Yes, and that is what is being done. It has already been recommended by public accounts, because I too sat on that committee. The Provincial Auditor intends to have that done as well. What we could possibly do is re-emphasize or confirm that this committee is also concerned with that and that the result of the audit in 1996 is going to be of great interest to this committee. It would re-emphasize the fact that more than one committee is interested in what Simcoe Place is going to cost and so on. I suppose we could do that.

Anyway, it wouldn't matter. If public accounts tells them to do an audit and this committee tells them to do an audit and resources development tells them to do an audit, the result is that the auditor is going to do an audit and all three of us will get the same report.

Ms Margaret H. Harrington (Niagara Falls): Is that clear enough?

Mr Yeager: Yes, fine.

The Chair: Item 9, funding strategy.

Ms Murdock: The growing unfunded liability is of great concern.

"Although the WCB has significantly reduced administration costs, the target rate for employer assessments has been kept as low as possible to avoid inflicting hardship on employers who are already suffering the effects of the ongoing recession. The WCB must develop a new funding strategy which addresses the viability of the system into the future."

Our recommendation is that they "should conduct consultations with the workplace parties and provide a report to the minister."

I should say that in December 1993, the bipartite board, again in a unanimous decision, because of the questions in the House on the increased rates and the experience rating to some of the employers, where the average increase was 3% but there were some companies that were getting 25%, some that were getting more than that and some that were getting less, because of all that, the board capped the rates at no increase higher than 33%. Both the employers and the labour side at the board agreed to that. In the meantime, it is frozen. It hasn't been increased. It has been frozen at the 33% maximum. But it can't sit like that for ever because the board obviously, with the declining revenues, needs to get its assessment experience rating done and figured out.

I should add too that the assessment rating was a three-year project which all the employers had demanded and asked for. There were many companies that had a high experience assessment rating and were being charged a high rate, yet they had a low accident rate. It was the employers themselves who got that whole exercise started. As a consequence of that, many employers were moved out of one section into another section, depending on their accident rate.

It makes sense to me and I presume to everyone else that you should be paying on the basis of how many accidents you have in your company. If you have a low rate of accidents, then your assessment rate would be lower, and if you have a high rate of accidents, your assessment rate would be higher. That just makes sense. But that has to be more defined and delineated, and those consultations in my view should start. They actually are under way, but they should really be working hard towards getting an assessment rating system that the employers can live with.

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The Chair: You are saying there is a cap of 33% at present. So all the controversy we heard about 75% rate increases was not factual?

Ms Murdock: As of December 15, 1993, the board capped it; a unanimous decision, I might add.

The Chair: That's interesting.

Mr McLean: So those 4,000 companies that were increased 75% over the 1993 rate is not an actual fact.

Ms Murdock: They will not be increased more than 33%. They capped the increase at 33%. Don can explain it in more detail. He attends those meetings.

Mr Eady: The board sets assessment rates usually every October. Before that, in the summer, the board goes out and consults with labour and employers on what the new assessment rate should be. You may remember hearing some talk about an average rate being \$3.04 and a target rate being \$3.20, and that the difference between the target rate and the actual rate is essentially the unfunded liability. You may recall that from, I think, September.

In October, at the board of directors' meeting, they voted to increase assessment rates on average 3%, but that had the effect that some people were going down dramatically, like hospitals, for example, because, as Ms Murdock said, they had a better accident rate and therefore their rates were declining. Most of the members probably got letters from their local nursing homes or people who were facing quite dramatic increases. The board's initial decision in October said that the average assessment rate would be roughly \$3.04 or \$3.03.

Ms Murdock: Per \$100 of payroll.

Mr Eady: Per \$100, which was an increase of about 3% over the 1993 rates. But that had the effect, and most of the members heard this in their constituencies, of some firms having quite dramatic increases: 30%, 40%, 50%.

The board listened to the employers and to questions in the House and revisited the issue in its December board meeting and decided to cap any rate increase so nobody's rate would go over 33%. So if somebody's rate

was projected to go up 66%, it would only go up 33%. That has the effect of an average rate now of \$3.01 and an average increase overall across the board of 2% instead of 3%. That's what the board decided unanimously in December. That's what the 1994 rates will be. You wouldn't have heard that in September because the board hadn't made the decision on its 1994 rates when the hearings of this committee were held.

Mr McLean: But when you consulted with the employers in October, they recommended and agreed to have a rate increase?

Mr Eady: There are, I believe, four employer members and four injured workers/labour members of the board. They've all voted unanimously to change their decision that they made in October; in other words, to cap the rates at 33%.

Mr McLean: Was there unanimity in October?

Mr Eady: No, I believe it was a split vote.

Mr Bradley: We raised it in the Legislature.

Ms Murdock: The House wasn't sitting—

Mr Bradley: No, we raised it in the fall and they woke up in December; they didn't have their meeting till then. So don't say the House wasn't sitting. The only reason we got this is because the House was sitting and we raised it and the opposition made noise about it. Then the WCB did something about it. It's the only time they did something about it.

Ms Murdock: I find that somewhat difficult to believe. I'm sure that the four employer representatives on the board of directors are not little wusses who have no ability to speak for themselves or argue against the labour side. It's just incredible to me that they would not represent their constituent group efficiently.

The Chair: How do you spell "wusses"?

Ms Murdock: I have no idea. Wimps. Use the word "wimps" instead.

Mr Bradley: Just a general question, since highways are difficult on those of us driving in these days. Who produced this particular document?

Mr Curling: The wonderful government of Ontario.

Mr Bradley: I would have guessed that.

Ms Murdock: I was asked to hand it out to the membership, and I did.

Mr Bradley: Fine.

The Chair: In fairness, this was strictly a reference note sheet for the government members, and because Ms Murdock was reading from it, she agreed to kindly share it because Hansard and Mr Yeager needed it rather than to try to write as she was reading, and then Ms Murdock decided she should share it with all the committee. So it's just their own government members' notes.

Ms Murdock: Our recommendations.

The Chair: The reason we started this way, Mr Bradley, was that it was agreed we would go through what the government recommendations were, discuss them and then the two opposition parties can make their recommendations and then we'll all discuss those too.

Actually, that completes the government discussion on

funding strategy, so we would then move to the official opposition.

Mr Bradley: Looking at this particular report, it's full of self-congratulatory language which I think does nothing to enhance the position of this committee in trying to effect substantial changes at the WCB. When I read the words "unprecedented consultation process with stakeholders," that's built-in government propaganda.

"By its very nature, consensus building does not attract headlines." That's saying that the news media, because this is good news, aren't going to cover it. "The committee urges the WCB to continue its excellent efforts to prevent and detect internal and external fraud." That's only an opinion of the government members, "excellent efforts."

Ms Murdock: No one's disputing that. That's exactly what this is.

Mr Bradley: I just go through and look at all the loaded words that are used in there to be self-congratulatory which may make government members feel good. I don't know if it's going to make the kind of changes we need at the WCB because, at some point in time somebody, whoever it is, is going to have to pick up the pieces of what's happening right now, and woe betide the government in power in 1996 with some of the stuff that's going to have to be rectified.

I think by putting in the congratulatory words and the government propaganda, it does not help to improve the circumstances that exist at WCB for whatever government has to take charge at that time.

Mr John C. Cleary (Cornwall): My colleague talked a little bit about number 3. Where are those positions that you filled, and I think you said 35, located? Are they located throughout Ontario?

Ms Murdock: No.

Mr Cleary: All are right in Toronto?

Ms Murdock: Right.

Mr Cleary: They will all be in the new building?

Ms Murdock: M-hm.

The Chair: Could you say that audibly?

Ms Murdock: Sorry. Yes. I mean they're looking at fraud throughout the whole system, but they're doing that from a central location and they will be part of the new building. They are part of the old building.

Mr Curling: My only concern too—I just wanted to re-emphasize what Mr Bradley said—is that I think the purpose of all this is to maybe make a better Workers' Compensation Board and make it more effective.

Let me then say to you that presenting this helps us maybe to focus—and again you're subject to the criticism. But really, having read these, which are your notes, I don't think after the day is over, workers' compensation will be improved in any respect. I don't think the message is sent.

There's a clear message that must be sent in the restructuring, reformation, renewal or the renaissance of the Workers' Compensation Board: that the people it is serving feel that they are served and we get a better service from this institution. I'm not quite sure that the

message here was sent forcefully.

We've got to make sure that the report we rewrite sends that message to the Workers' Compensation Board. That's why I focus on the fact about what the auditors and what the committee said, "Oh yes, you have been a naughty, naughty person. You went out and bought this wonderful place, this very expensive place. People were against it," but saying to them afterwards, "Let us reassess it later on"—we know if it is expensive or not or whether people want it. I don't think they'll ever buy the fact that a move like that should have come now, but that's after the fact. It's done. I don't even think it should be mentioned in the report because the auditor's report will be watching that one very closely.

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I think, too, that in the case of the fraud and the things that happened there, a stronger message must be sent through our report, that some forensic audits should be done and things like that should be done in there, so it does not repeat in the workers' compensation how we deal with the client group and how the compensations are paid. Those are my comments.

The Chair: Mr Curling, I think we'd better be very clear for Mr Yeager's sake, because you're saying you don't think that should be mentioned in the report and yet this committee and the two opposition caucuses certainly spent a great deal of the hearing time on Simcoe Place itself. If you're now saying at the drafting stage of the report that that shouldn't be in there, personally, as the chairperson, I don't think that would then be representative of how the review of the WCB actually took place. Whatever recommendations the committee wants to make, that's your choice, but I think there has to be an acknowledgement of the fact that days of discussion of Simcoe Place during the review by this committee did take place. I don't think you can selectively now write a report and not include it.

Now that we've dealt with the government's position on the review of WCB, we need to know what the official opposition's position is on the review of the WCB and what direction you want to give to Mr Yeager in drafting the report of the WCB.

Mr Curling: I hear what you're saying, but let me just emphasize I didn't say to not mention anything about Simcoe Place. I was just saying that it seems to me some recommendations that are being said here about checking about rates and annual costs and all that—of course we must mention Simcoe Place. I didn't say that.

Ms Harrington: That's what it sounded like to me.

Mr Curling: Well, if it sounded like that, I'm wrong and maybe you got the message. I'm just saying that on some of the recommendations about assessing what's the annual cost and what's the leasehold and the furniture costs, my feeling is that, as Mr Bradley put it, the horse has gone through the gate already—but of course, to emphasize in our report that we express great concern of that decision of buying Simcoe Place.

The Chair: Mr Mahoney was the one who talked about the carpeting at length.

Mr Curling: Oh yes, because at that time the

expenses were being done. Now, I mean, it's bought.

The Chair: Okay. I'm just trying to report accurately about what took place.

Mr Curling: Yes, and I'm just trying to make sure that it is not reflecting that I said, "Don't mention Simcoe Place." I'm saying that we should. If it came out that way, I'm sorry, but we are being corrected.

The Chair: That's fine, we've clarified that.

Mr Curling: The other part there, too, is I think that we had some suggestions. We have nothing written and we're not ready today to do it, and I know you're going to write the report between—

The Chair: You're not ready today with any information on drafting this report?

Mr Curling: Yes, that's right. I should say two things. You see, Mr Mahoney, who is on a task force right now in Hamilton, would have been here but he can't be two places at once. I know that when we had changed to have the report done right away, we were trying to contact him to be here to make a contribution, because he was the leader—

The Chair: But we've known for three weeks, since January 6, that we were going to be drafting this report today on WCB.

I'm only saying that in fairness, because it isn't a last-minute decision of this committee to draft this report today. When we set up what the program for this committee was in the sitting days that were assigned to us by the Legislature, we agreed to complete the reviews of the Ontario Food Terminal Board and we have other work scheduled for next week, and the initial direction for the drafting of this report was assigned as the work for today. I'm simply saying what the committee agreed to.

Mr Bradley: One of the problems I see as well is, as you look into the future, the fear of what the board may expand to in terms of its coverage. Employers and many employees are very concerned, and the general public, that the board is going to continue to expand its coverage to areas where there is a lot of controversy and will do it at great cost to the system. We're going to end up in this province with no businesses when we're finished. I hold no brief for unsafe businesses but I don't know what's going to happen in this province if we keep loading more and more and more on to the plate. One of the things that the committee has to probably make some reference to is an impartial evaluation of what services are provided and what things might be covered in the future.

We are now talking about workplace stress, for instance. On that basis most of us in the Legislature would qualify for workplace stress, I think all parties, knowing the amount of work that each member has within his or her constituency and so on.

I look at some of the new areas which the board or the Chair of the board is looking at, and that can only be reflected in terms of higher costs. Maybe we're prepared to pay it in this province, but it seems to me that there's great resistance to that out there.

The other thing that I think all of us look at, and the government paper makes some reference to this, which I

think is positive, is dealing with the fraud. I think the goal of all of us is to service those who are genuinely injured as well as possible.

My concern, as I'm sure it is of all members and our constituency offices, is that we have people who aren't being served as they should be who are injured workers and we have others who simply know the system very well. In one's own mind one might say, "By gosh, if I had the choice of the two, here's one person who I know is genuinely injured and is not getting the service needed and here's another who's doing very well, thank you," and one has to wonder whether that person should not be subject to some of the investigation you've suggested.

It's a goal. I'm not saying there's an easy solution. I'm not saying that. Mr Marchese would know, for instance, that the real dilemma for the WCB is to serve those who genuinely need it. I see many people who I feel are left behind. They phone our offices in desperation, they have a good case and they can't advance it. I see others who are very slick and know how to advance their cases very well and may not need it as much. I don't know whether Rosario has any comment on that. He's had some experience with the board which is helpful to this committee.

Mr McLean: I want to put some recommendations that we have on the record if the official opposition—

The Chair: You're prepared to give some direction.

Mr McLean: I'm prepared to make recommendations.

The Chair: Before you do that, Mr Marchese and Mr Curling wanted to respond to Mr Bradley's comments.

Mr Marchese: Mr Bradley raises good points. The point is, how do you get to that? Quite clearly, an injured worker has to prove that he has the problem and has to get medical approval for that injury; the doctor says, "Yes, there is evidence of this problem," and if it's of long duration you go to a specialist to get other opinions from the specialist. Based on medical evidence, however that is determined, then you have a case.

It is true that sometimes some individuals will take a long time to get through the system and others who know the system better will get through it faster. But I'm not quite sure how you make that whole process easier. Mr Bradley, while recognizing what you're saying, I'm not sure how much more efficiently we can do that.

Mr Bradley: Just in response, part of it was that you mentioned the investigation of fraud that would take place. I saw the words "excellent efforts," which immediately sends a red flag up for me, but efforts nevertheless have to be enhanced in that regard, it seems to me, in trying to determine that. Because there's only so much money out there, I want to see that money and those resources get to the people who are genuinely in need. Unless we tackle the issue of fraud, as I think there are at least some initial efforts in there to do, then that's going to mean that the people who are genuinely in need are not going to be getting as much as they should in terms of service from the WCB.

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We've all gone through cases with people who are really deserving and just have run up against a wall every time and then we've run into other cases where some of

us may suspect the person is not as injured as perhaps is suggested. I think certainly the efforts on fraud have to take place. It's not a witchhunt you want out there. It's simply trying to designate the people genuinely in need and get the resources there. I have a fear that the system will collapse if we don't get hold of the financial end of it, and nobody benefits from that. That's my concern.

The other thing I mentioned—I don't know if you heard it, Rosario—was the concern about the expansion of coverage to new areas, that I don't see mentioned in here, that at least has to have a very careful assessment before we move forward.

I'm not saying a consensus may not develop among employers and employees and the general public, that there may be an expansion. I'm just saying that they're extremely controversial now, and we know every time we expand that there is a dollar sign that must go with that. Your government has found and every government finds that once you get in power, all the other things you'd like to do, financial circumstances just don't allow you to do.

I'm trying to get the best bang for the buck out of the WCB. I don't want to put it crassly in financial terms but that's the only way you're going to get service to those who genuinely need it.

Mr Curling: I want to add to the four recommendations that Mr Bradley put forward. I hear him saying, and we fully agree and that's how the Liberal Party stands on the recommendation, one of the things he just mentioned about no expansion of coverage, and we feel we don't need any more expansion within the workers' compensation.

Earlier on, he mentioned also about no compensation for stress, which we are quite concerned about.

Mr Bradley: Without consultation. I think there has to be consultation. The point I'm making is very careful consultation and consensus developed before we move into new areas. I don't know whether we can totally close the door to new areas but we certainly have to have a consensus out there before we move forward.

Mr Curling: The third one that he mentioned which is of great importance is value for money. We have to get value for money for what we do.

The fourth one, fraud, I mentioned earlier on about having better controls. Maybe a forensic audit should be done to make sure that the system is not abused.

There are four other areas which I would like to mention and put on the record. We want more accountability by the board of directors. We feel that could be of assistance in improving the place. Better governance is another one and then better control.

At one stage I think I heard, and I'm re-emphasizing, no new claims, and again we're going to go into an area of getting other claims thrown into workers' compensation. Right now I think it's overburdened. We must make sure that if there are any new claims they will be well researched and well done, because there are a lot of new claims that are coming in which cause a swelling of the payments and sometimes more abuse anyhow.

We're not looking forward to seeing any rate increases because everyone is completely concerned now that

increasing rates to the employer is another cost to actually running business, and another straw that could break the camel's back is an increase. As far as the employers are concerned, they don't need that. What we need is what we haven't got: value for money and that the place is run efficiently.

Those are the recommendations we would put forward. The report will reflect them and we hope the Workers' Compensation Board and the government act upon those.

Mr Marchese: You said no new claims, and if there are going to be that they're well researched. Am I understanding you correctly? Claims happen, injured workers declare an injury and the claim is established and then you follow the usual procedures where you have a doctor's report and, based on that, the WCB adjudicators make a judgment on the case. What are you suggesting?

Mr Curling: Maybe I should say no new types of claims. In other words, I'm not saying that no other claims should be done—venturing into new areas of claims for compensation, whatever the term.

Mr Bradley: I guess because one would logically say there would be new claims coming in every day. It's expanding into new areas without a lot of consultation and consensus, which is needed.

Ms Murdock: When I raised my hand to be recognized, it was because Mr Curling had said that there would be no new claims. I thought, we can't preclude the board from making those decisions; that's what they have a board of directors to do. But I agree with Mr Bradley. Actually, we probably couched it in language that he doesn't like, but it's not saying much different than 2(i) on our recommendation, that any policies or any development of any program of any coverage area should be subject to rigorous scrutiny, and that would include with all the stakeholders. We agree on that.

Mr Curling: If I can just make it clear, I agree with Mr Bradley too. I'm saying no new types of claims.

Ms Murdock: You're correct; you clarified yourself.

Mr Robert Frankford (Scarborough East): I don't know if I really want to spend the committee's time, but I felt compelled to respond to some of the remarks over there. Am I not correct that getting into new claimable disorders, if you like, is not purely an administrative or political decision? Isn't there some committee or board which discusses that? Is there not something that makes it objective?

I know there are going to be soft areas around the edges, but supposing some new hazard of work appeared, something that has not been covered in the past, I'm sure that would have to be automatically covered. We cannot decide now that ultimately the types of injuries that exist right now are what can exist for the future. I mean, we have to allow for changes that we cannot predict. I'm not saying that the areas around stress and mental disorders, say, should be automatically included or excluded, but I think that the process is more objective than I get the impression you're saying.

If you want to move into broader areas, and I think the committee presumably could, one of the questions about coverage is whether one brings in work situations which

are not covered at the present time. I believe the banks are one of the big areas which are excluded. If we want to discuss that, no doubt we could, but I think that is being discussed elsewhere. If the committee wants to deliberate finally, I don't think we have enough background from what we've done in our hearings to make any great decisions on that.

Just while I'm discussing that, if one really wants to go broad, what about the possible implications of a significantly shorter work week, which is being looked at? I'd be interested to hear from the advocates of that approach what they would see in relation to the WCB claims. I think one might even see ways in which that could reduce compensable injuries. Maybe it wouldn't, but I think it's an interesting topic that will be discussed.

Mr Curling: If you let us respond to him, although not going into debate now, the understanding of what the purpose of the Worker's Compensation Board is all about is that it is an insurance agency. You pay for it and there is certain coverage which is properly defined. What type they are covered for they will pay for. The fact is that there are many, many things, I'm sure, that people will suffer from in the workplace. I presume that they look for the most common and then compensate people when they're injured in the workplace or whatever, "injured" meaning from whatever degree—mental, physical etc.

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Therefore, if we're going to start looking at wider areas, there's no free lunch in this world. If you're going to pay any more money out, you've got to get the money from somewhere. So that has an impact somewhere else. You either have to increase the fees or—just like your dental plan that you have with the Legislature—there are certain times you go there and they'll tell you they only pay a certain amount, that they're not covering all of that.

If we say we're going to expand more into that area, they then have to pay more. We have to be very careful. I don't want to get into a debate about that, but it is best we make sure that when we go into new areas we must be prepared to pay more.

The Chair: At this point we are finding out what the Liberal caucus recommendations were in the drafting of this report. That's where we are in this meeting.

Mr Cleary: It's been mentioned here several times by the government that it was a board decision, you know, some of this. What I want to know is the present makeup of the board. Are all the positions filled at the moment?

Ms Murdock: Yes.

Mr Cleary: And the present makeup?

Ms Murdock: Four labour, four management and the chair.

Mr Cleary: That's it, and they're all full?

Ms Murdock: Yes.

The Chair: Thank you.

Ms Murdock: No, just a minute, because I would hate to have this come back to me saying that I lied when it would certainly be unintentional if I did. There is, I believe, one position that is coming up for reappointment.

Mr Eady: Section 56 of the Workers' Compensation

Act provides for two positions, the chair and the vice-chair, Odoardo Di Santo and Brian King, and then it provides for a minimum of five and a maximum of nine directors. I believe there are only eight directors. There technically would be another position open. There could be six; there could be nine. It would be correct to say that theoretically we could put another person on that board. But the idea is that there would be four from the labour and injured workers' community and four from the employer community. Those positions are all filled now.

Mr Bradley: One can understand how you want four from each so-called side or position on the board. When they vote, each board may have a different way of doing it. If there is a tie at 4 to 4, is the chairman a voting chairman and is the vice-chairman a voting vice-chair?

Mr Eady: I believe that's not necessarily specified in the statute, but it's specified in the rules they govern themselves by. The chair would break a tie and in the absence of the chair the vice-chair, Brian King, would break the tie. I think they have a procedure whereby the vice-chair and the chair don't vote to make ties. Let's say you had 5 to 3; you wouldn't have Mr King and Mr Di Santo voting to deadlock. I think that's generally the way they operate. They try, I think, to work on a consensus basis as much as possible.

Ms Murdock: Just as further explanation too, for Mr Cleary's sake, on the legislation on the composition of the board, the nine, it just says that there's to be equal representation from labour, management and one professional member of the community. It can be either a member of the community or a professional person. But usually what they've done in the past is they've had that person wear both hats, and there have been nine present, but it's down to eight now.

Mr Eady: The statute says that the board may be composed—it's not mandatory—of representatives of workers, employers, professionals and the public, I believe is the way the statute is worded. So when all governments have been trying to appoint people, sometimes they may have a rehabilitation specialist who would be sort of filling a medical role on the board, or they may have a lawyer on the board, or somebody who doesn't have any direct affiliation with either employers or injured workers' groups or labour unions or workers' organizations. That's generally the way that works.

Mr McLean: I'll take about 10 minutes and I will put on the table some recommendations, some observations and some comments, having the opportunity to sit through the hearings on the WCB and the discussion that took place with regard to many of the issues surrounding the WCB.

Somebody recently described the workers' compensation system as a zoo of good intentions run amok. By all accounts, whether it's from the viewpoint of employers, workers or government, workers' compensation is in serious trouble. It's got an \$11.5-billion unfunded liability that is growing at an astonishing rate. Skyrocketing premiums are delivering death blows to many of our existing businesses and making Ontario less attractive for new business, investment and jobs. Meanwhile, the system is seriously failing to address the legitimate needs

of those whom it is supposed to help, and those are the injured workers.

So when we look at the facts, this year over 4,000 businesses will face rate increases of over 33% over their 1993 rates, over 27,000 employers will face increases of more than 25%, and we've got 90,000 companies that will be forced to increase their WCB premiums by 10%. This is not fair, and jobs will be lost.

Last February, the Minister of Economic Development and Trade released a study which said that even a minimal increase in WCB rates would lead to job losses and in some cases put companies out of business. That's what the Minister of Economic Development and Trade said. So here we have a board that is increasing the rates substantially.

WCB rate increases continue to skyrocket. Benefit expenditures have increased by over 50% since 1988, despite the fact that the number of accidents has decreased by 37% and the rate of injury has declined by 30%. In addition, the WCB itself has estimated that it is defrauded of more than \$150 million annually. We heard all these facts when we were dealing with the chairman of the board and the vice-chairman.

We attribute the debt, the cost and the failure of workers' compensation to the fact that it has become increasingly regarded as an employer-funded social safety net, rather than remaining true to its original concept as a workplace accident insurance plan. It has become a universal system to compensate everyone for pretty well anything, and that is that problem, it's not the solution.

So instead of expanding the mandate and scope of workers' compensation, as some in the current government have proposed, I believe that solutions lie elsewhere, and I will give you some of those solutions.

We should declare a moratorium on all new entitlements, such as stress compensation, pending a long-term plan to manage the WCB's spiralling unfunded liability. I believe that is the first step in trying to get some control.

We should end the political appointments of senior positions, hire a qualified insurance executive as a chair and supplement the executive with an entirely new turnaround management team, also recruited from the private sector.

Following Manitoba and New Brunswick's lead, we should change the 90% of net benefit level to ensure workers don't receive more in compensation than they would if they were on the job.

We should implement a package of administrative reform measures including value-for-money auditing and internal spending controls, which the government's number 9 recommendation aims at.

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We also should investigate some form of copayment to enhance accountability. There's a clear message: The WCB's unfunded liability is out of control. We've got to get it back in control. I would suggest that some of those recommendations I stress there would be a step in the right direction.

So with that, I would say that the six recommendations

I'm making, I would like to see them part of the recommendations that Mr Yeager will be recommending or reworking so that we can have some input with regard to that unfunded liability problem that we have.

The Chair: Comment? Ms Murdock.

Ms Murdock: I almost hate to because I thought we'd finish this sooner. Just on Mr McLean's last point, in terms of being so specific about examples of what the board should be doing, it sort of goes along with what I said speaking the last time, that I have some concerns about being that specific; in other words, directing the board that's what it has to do.

I would rather have it fall under language similar to—not absolute, of course—"policy and program delivery and development must undergo serious scrutiny" and that kind of thing, and that such policies could include examples of Mr McLean but that are not exclusive to. Do you know what I mean?

Mr Yeager: Yes. Perhaps at this stage we could include the recommendations pretty much as given and then when we have a written document, we can all look at them and see how they balance out and how much everybody is willing to support them as is, or perhaps there could be some flexibility on all the recommendations.

Ms Murdock: Okay, that sounds fine.

Mr Yeager: But that might be the time to—

Ms Murdock: To discuss it in detail, okay. And the other thing is, just for the record, at the beginning of Mr McLean's comments he talked about the numbers of companies that had increases. I would also point out that there were 50,000 companies in the province that had WCB rate decreases. Also, I think Mr McLean was here for the 33% cap that was explained earlier on the record. That's all.

Oh, and I want him to explain, by copayments, do you mean that the injured worker pay a portion? Is that what you mean by copayment?

Mr McLean: We want it looked at. That may be a possibility, getting back into the insurance part of it. You see, the WCB's the same size as about eight of our largest insurance companies in the province. A lot of those people who are involved with those insurance companies have copayments that they make as part of a deduction. It's worth looking at.

Mr Bradley: In regard to the appointment to the position of chair, the reason that I made the inquiries about how the voting goes on on the board is that obviously what this emphasizes now is the importance of the chair and vice-chair, if they are indeed the people who break the ties, because that appointment—and governments are certainly permitted to do this—will determine to a very large extent the direction in which the board is going to go.

Mr McLean has suggested that they not be political appointments. I think he meant by that that they not be partisan people. We've had over the years a number of people with a partisan background. Dr Elgie was appointed to head the WCB. I think Michael Starr was at one time. Mr Starr was a former Conservative cabinet

minister in Ottawa. Mr Lincoln Alexander was a former Conservative member in Ottawa. Dr Elgie, who was appointed by the Liberal government, was a former Conservative cabinet minister. And Mr Di Santo at the present time.

We've seen people who have had some political background and I don't know whether you can ever prevent that from happening; in other words, that you want to eliminate that person simply because that person has some political background. But I think there seems to be a bit of a consensus out there that at least, if the board is moving towards more financial accountability, it has to look at whether we want a political person in that position regardless who that person might be.

It's a hard question to answer because some of the people bring a lot to the board, have brought some experience to that board over the years and some concerns about workers' compensation. So it's difficult to say that's going to solve the problem. But I think what we can all observe is that whoever you put in those positions of chair and vice-chair, those people are going to go a long way to determining the direction in which the board is going. It's also nice to have those people come in to committee so that they can hear what members are saying, trying to reflect what their constituents are saying or perhaps what the members themselves believe about it.

So, it's a very difficult question, to totally eliminate anybody who's ever served in public office from that position. But I think it is worthy of noting how important a position that is.

The Chair: I think we've completed the direction to Mr Yeager for the report in draft form on the WCB. We just have to decide when you would like this draft report to come back to the committee. We have an option of doing it the first or second week that the House is sitting after we come back. We come back Monday, March 21. Would you like the draft report to be ready that week or the next week?

Ms Murdock: We are going to have time to read it before we get into discussing it, right?

Clerk of the Committee (Ms Lynn Mellor): We could do it that first week, and Lewis would get it to me in time for me to distribute it a few days ahead of time.

Ms Murdock: Yes, so we have a chance to read it.

The Chair: Is two days ahead of time long enough for you to review it before you're prepared to come back in and discuss it?

Ms Murdock: It is for me.

Clerk of the Committee: Lewis normally would get it to me on Friday at noon the week before and I would produce it and get it out to you that day, so you'd have it on the Monday. At the latest, you'd get it Monday morning in your offices.

Ms Murdock: The committee doesn't usually sit till the second week anyway.

The Chair: No. So shall we do it the second week?

Mr Marchese: Sure.

Ms Murdock: So we'll get the report the first week-

end and look at it the second week.

The Chair: The second week would be March 30, so if you could advise your caucuses that it will be dealt with on Wednesday, March 30, because that's got to be finalized that day.

Mr Bradley: Sure, I appreciate that. Madam Chair, I ask this question of you and of the committee. There was a pretty interesting discussion that took place here. Some good proposals came from all sides, good recommendations. If as a result of the exchange that's taken place, any of the caucuses or any individual members of this committee have any further information or recommendations they might wish to submit, would they be permitted to submit them directly, perhaps through you, to Mr Yeager? Is that permissible?

Mr Marchese: With a copy to the members.

Mr Bradley: With a copy to all members, yes.

The Chair: Submit them to the clerk and the clerk will give them to everybody, including the researcher.

Mr Bradley: Sure, because there were some good ideas that came out of the exchange here, I think, and the precise wording is going to be important in these.

Clerk of the Committee: Could I clarify? When sending it to the members, now, Ms Murdock, are you going to be the one substituting on for the duration of this, I'm assuming, so it should go to you?

Ms Murdock: If WCB is going to be discussed.

Clerk of the Committee: So a copy should go to you. Okay.

Mr Yeager: Could I ask, could there be a cutoff date for these additional materials?

Ms Murdock: Yes.

The Chair: Yes, in fairness, that's important.

Mr Bradley: Do you want to suggest a date?

Mr Marchese: The end of February?

Mr Yeager: The end of February would be excellent.

Mr Curling: Okay.

The Chair: That's fair. All right, so any further submissions will be made to the clerk's office by the end of February.

DRAFT REPORT

ONTARIO FOOD TERMINAL BOARD

The Chair: Now, members of committee, we have another report, the Ontario Food Terminal, to give direction to our researcher, Mr Richmond. Our schedule was to sit from 10 till 12. Would you rather finish this and then not have to return this afternoon?

Mr Marchese: That would be my preference.

Interjections.

The Chair: All right. Let's move along, then, and we'll get into the Ontario Food Terminal.

Mr Curling: That was democratic, eh?

The Chair: Well, I heard a consensus.

Mr Curling: I don't have difficulty with that actually.

The Chair: Also, there is still a subcommittee meeting today for the subcommittee members.

Mr Curling: Let's just shelve the report now.

The Chair: Oh, sure, it's up to the committee.

Everyone received a copy from the Ontario Food Terminal this morning, so I'm open for discussion. Mr Richmond has a draft.

Mr Jerry Richmond: Just some points.

The Chair: He has some briefing notes here which are now being handed out to you, so maybe what we should do is just quickly get into Mr Richmond highlighting this. You don't have to read all this to us, but perhaps you can highlight some of the areas you might want the committee to give you direction on.

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Mr Richmond: Madam Chairman, I didn't realize I was on. Could I just run to my office? I didn't bring my material here. I thought you were going to be adjourning.

The Chair: Oh, heck.

Mr Richmond: It will take me two minutes. Do you want me to speak to this and then run out?

The Chair: Yes, why don't you do that, because then they can start speaking.

Mr Richmond: The notes that I prepared I finished this morning. They're probably self-explanatory but I'll just highlight them. What I attempted to do is to provide you with some suggestions, guidance, to assist you in considering recommendations, although we all know any other issues any member wants to bring on the floor, that's up to the committee to consider. I'll just highlight some of the headings here.

It seems that one of the main issues at this round in looking at the food terminal, in contrast to previous committees that focused in on the perpetual leases, was the possibility of reviewing updating the enabling legislation and the various regulations that govern the operation of the food terminal.

What I've done there in the first section is I've just put down some notes. They're really options and strategies. The general options, the first bullet point there, just puts down some of the options that you may want to consider and weighs some of the pros and cons.

I guess at one extreme there's the option of trying to come forward with an entirely new statute and supporting regulations. That may have certain strengths or weaknesses.

Below that you have what I've termed the possibility of housekeeping amendments, the possibility of looking at the regulation-making power, and the last one, the thrust of the recommendations, is just providing general direction to the food terminal or OMAF in approaching the issues that have come to our attention.

I guess we've all had many years' experience around this place. If the government or the committee were to consider an entirely new statute, I just set forward there some of the usual things that happen when statutes appear before the House at this place. It's not a simple task. I'm sure we're all familiar with this.

Usually, the government initiates a consultation process with the so-called stakeholders. They may then come up with a draft report, a draft piece of legislation, and then

that might be discussed at the ministry level. It may eventually result in a bill that's given first reading, and then it would go through the normal process, referral to committee. I think we all know that can be a quite complex and time-consuming task.

The only reason I put that forward, if you went to consider an entire review of the statute, is there are other stakeholders besides the food terminal itself. There's the whole broader agricultural community: farmers, growers, processors, the people who use the—yes?

Ms Jenny Carter (Peterborough): I'll wait.

Mr Richmond: I just put that forward for you to consider. That relates back to the first point of the strategic options the committee may want to go into.

Then this possibility was suggested, the third point, of one possible way of getting around this. The committee could recommend the thrust of some interim or housekeeping amendments to the statute pending a more detailed review, and may also address some of the matters which cabinet might see worthwhile putting forward in the form of regulations.

Those are really strategies and I think they're very germane to what we discussed over the two or three days, just to put it into some context. Of course, it's entirely up to you to decide which route you want to take.

The second point: When I prepared this, I obviously hadn't seen the detailed submission we received on the food terminal's suggested amendments to the statute, and I must admit I haven't analysed this. I will do that over the break. But based upon our deliberation over two or three days and the initial discussions, I've identified there, from my notes yesterday, what some of the major issues are relating to this matter of the possibility of reviewing the act. They're just set out there. I think they paraphrase some of the debate, some of the points put forward by Mr Carsley and his officials and the members of the board.

I tried to be as inclusive as I could, but if someone else has something else, we're certainly open to addition. I just quickly last night and this morning thought I'd put these into some context. So you can glance at those.

The fourth bullet point may be of interest to you. I attached some material on conflict of interest and spoke to the Conflict of Interest Commissioner's office this morning. You'll see the results of that.

The general impression that I got from them and looking at the various materials, and this we can certainly discuss, is that if an agency like the food terminal, of its own accord and possibly with consultation with the Ministry of Agriculture and Food, sought, as a board, to prepare conflict-of-interest guidelines for its board members, the indication that I got, and this is from the Conflict of Interest Commissioner's office, and I'm sure each of you have probably met privately with Mr Evans—

The Chair: Oh, yes. We have to.

Mr Richmond: I know we met him and he seems like a pretty respectable fellow. He has a lot of experience. Anyway, the impression I got from his executive assistant was that if the food terminal board sought, as a body, to

prepare internal guidelines on conflict of interest, they felt they could do that. They also felt it would be unlikely, if they had these internal guidelines, that someone would challenge that. I thought I'd just pursue that a bit.

Mr Bradley: In that regard, that is an increasingly important component of any board any more, this conflict of interest. We have seen it in government, but in a lot of appointed agencies or even somewhat voluntary agencies it becomes increasingly important, because there is always someone outside looking in and saying, "The reason that decision was made was because this person has a vested interest." So I think that recommendation that it be developed, even internally, is a very valuable one today so that we don't have people feeling that they're being discriminated against because somebody else has a vested interest in something that's going on at the Ontario Food Terminal.

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Mr Richmond: The other document that I attached, in cooperation with my colleague Ray McLellan, who I'm sure a number of you know from other committees he's worked on, mainly public accounts, over the last number of years—Ray assisted me this morning and I've attached the Management Board of Cabinet guidelines. I've put a star next to their statement there on conflict of interest with regard to appointees to ABCs.

I think all this stuff seems to point in a general direction that the public interest, if I could put it broadly, is served. There seems to be a mood for public agencies to get into this, at least to clarify the situation and maybe set some guidelines or ground rules. So that's before you for consideration.

Beyond that, on the conflict of interest, I also made reference to the fact that one of the board officials, the assistant general manager, made reference to the fact that in years past, on occasion, some members of the food terminal board at their meetings had in fact declared a conflict of interest. So there's mention of that.

The other points, I think, reflect the matters Mr Carsley and the board members put forward.

Over the page, page 3, I also have a handout. Most of you got this earlier. I did a background briefing paper when we first began this and in that document spoke to a number of issues. I think those are very relevant and most of them came up during our deliberations. I've got, back in my office, some extra copies of that report that I want to get for anyone who doesn't have it with them or may not have got it because of the substitutions.

On page 3, I've identified a number of other issues the committee may choose to address. They relate more to the deliberations of the committee and some of the background material that I walked you through the very first day. I'll just highlight those. I'm certainly prepared, if you have questions or clarifications, to speak to them.

The food terminal, as you would know and as I mentioned in my background briefing paper, has prepared a five-year corporate plan in which they speak to various, mainly capital improvements that the food terminal should undertake. Some of those things they've undertaken; some of them they've yet to embark upon.

One of the major capital improvements that's been spoken of, but I think the board has faced financial—"difficulties" is too strong a word, I guess; they've been in a dilemma to try to find the money to finance this—is the extension of the deck over the farmers' market. That's one of the major outstanding capital improvements that I'm aware of. So I'm really putting this forward. The committee may want to comment on the corporate plan and some of the capital improvements that you, as a committee, feel the food terminal should undertake.

The second point there I think has been flogged around. Mr McLean can probably speak to this; so can you, Mrs Marland. The question of the perpetual leases has been around for a long time. I've attempted to encapsulate there just some of the points of debate and I think this has been recognized. There are historical reasons why they exist, and then you can debate whether they're equitable or just. I think if the board did want to get out of them through the possibility of revoking them there's also the question of having to buy them out. The food terminal board might be open to legal action.

The other possibility I've put in there is when the market and the economy improve. The board did have, in the late 1980s, their C unit project that they embarked upon. They did some of the initial engineering and architectural design work and expended some money for that, but some of the leaseholders, with the change in the economy and the onset of the recession, some of the people who had signed agreements to move into the C units backed out. In the aftermath of that, and there's documentation on it that you've received, the board cancelled that project.

On those C units, my reading of some of the previous committee deliberations was that they were regarded as a possible way of opening up the food terminal somewhat to get away from the perpetual leases, because the thinking was that these C units, if they had been built, would have been leased on a short-term basis. They wouldn't have had that perpetual aspect to them, the automatic 30-year renewal.

That's one possibility the committee may choose to touch upon, that if and when the economic situation improves, you may want to give the food terminal direction that it might think of reactivating a project like that.

Mr Bradley: Just a clarification, if I may, on the term "perpetual leases": I did not recall when we were doing the tour whether anyone had mentioned to us that those leases continue if someone dies but someone else in the family takes over the farm operation or the operation. Does a lease terminate when someone dies?

Mr Richmond: I'm afraid we'd have to get clarification for that from the food terminal itself.

Ms Murdock: She's saying no. There is a representative for the Ministry of Agriculture and Food who can advise.

The Chair: Would you like to come forward and answer the question?

Ms Marianne Holder: I'm Marianne Holder from the minister's office. I believe that the leases can be passed

on to children and that this is one of the reasons they were instituted as perpetual leases.

Mr Richmond: Some of the other points: In my earlier briefing paper there was some mention of the issue of privatization. What I was informed earlier, during the regime of the previous government, during the Liberal term, was there was some analysis of that. Some of the food terminal officials did travel down, I think they told me to New York state, to look at a market there that was privatized.

As to my sense of the privatization issue, unless the committee should decide otherwise, I don't think it's really in the cards. The sense I get is that the perception is that the food terminal is a long-standing public agency, 30 to 40 years, set up in legislation in the late 1940s and came into being in the early 1950s. My sense is that there appears to be a recognition that it's performing a valuable function in serving the wholesale produce market.

The Chair: I think that's going to be up to the committee to discuss. I think it's good that you have included it here. Everything is on the floor as far as the committee is concerned.

Mr Richmond: The next point there is the discussion of the food terminal having to make a voluntary or otherwise contribution over the three years of the social contract. Mr Carsley spoke to this, and also the chairman of the food terminal. I have it in my detailed files. I think it was distributed to you earlier. Mr Ireland wrote a letter to the Premier expressing his misgivings over this. That's an item on the table for the committee. I don't know whether the committee will seek to take a position on this.

We heard the board's argument. There can be debate over this, but even though they are a public entity, they feel that they do not take money from the public purse, that they've been essentially self-sustaining and they've retired their initial debt to set the place up. It can be a matter for debate.

The other point, and I didn't get a sense that this is a controversial one, but the committee may wish to comment on this, maybe give the food terminal some direction or maybe even some kudos, is the point of the impact of the recession and increased competition. That appears to be more of a matter for commentary but the committee may decide otherwise. I'm just reflecting on your discussion of this to date.

Knob Hill Farms, it was mentioned, has a wholesale outlet and there are a few others. From the documentation the food terminal officials provided to us, the food terminal so far appears to be holding its own and performing a function in the market, despite competition from elsewhere. It serves the greengrocers—but you can certainly debate this.

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The waste reduction plan was explained to us and I think we saw all those different coloured carts at the food terminal where they appeared to be quite diligent in putting cardboard and wood waste and everything else. They seem to be making a serious effort at the 3Rs. The committee may wish to comment on this. From your

debate, I didn't get a sense that this is a controversial issue. The committee may wish to recognize this and possibly even commend the food terminal for getting into recycling and the 3Rs in a big way. They did admit that part of the incentive here was the increase in the tipping costs to Metro's landfill sites, that it was an incentive to them to reduce their costs of getting rid of their garbage.

The cost centres were mentioned. The food terminal has nine of them. We asked for a detailed breakdown on the revenues from the cost centres. I don't know whether that's in this package here. The committee may wish to comment on them. Their major revenue centres are the leases and the admission fees. I think it was admitted by the board officials, and you certainly saw it on our tour, that the rail cost centre is quite underutilized. I think they said they get about 50 rail cars a year. Over the 40 years, the mode of transport for fresh produce has shifted from railway to truck.

The question the committee may wish to consider, and I had this in my initial briefing paper, is whether the food terminal should maintain the rail siding—you saw the space and extensive covered area—or possibly seek to also use that in the interim for trucks. They might have to make some physical modifications. The other option is that they carry on as now. When we went there, it didn't seem that covered area was being greatly used.

Then I have just put in there that there may be other miscellaneous matters that any of the members, based upon their interests, or at the constituency level, or their status as critics or having an interest in agricultural matters, may wish to bring to the table. For example, there were several questions over testing and inspection of agricultural produce for pesticide residues and irradiation and the like. Those may be very topical issues. The impression I got, though, from the board officials, was that's really beyond their mandate. They mentioned that the federal Agriculture Canada inspectors have an office and have access for their random testing that they conduct at the food terminal, but I didn't get any impression that this is a direct mandate and responsibility of the food terminal itself. So that's it.

Mr Curling: I just wanted to say, as a matter of procedure, that if we're going to really write the report, we just got this, which is very helpful, I might say, and we just got the food terminal board comments. What we're going to do now is to almost make recommendations or formulate this report. In the meantime, we're reading this.

The Chair: It's up to the committee, Mr Curling. If you wish to take Mr Richmond's notes and the submission you received from the Ontario Food Terminal this morning, and come back and give direction to Mr Richmond about the draft report, that's up to the committee. If you wish to do that, you can come back this afternoon, which may not be enough time for you. The option is that you could take this material away and we could come back to one of our meetings in the beginning of the session and give direction at that point to Mr Richmond for our draft report.

Mr Curling: The reason why I recommend that approach is that even if we talk about whether we go

making new regulations or amending the present act or making a new act, it's quite a decision for us to say in the report that's the direction to go.

In all fairness to us here, I presume the recommendations from the committee are taken seriously. Therefore, we've got to take it seriously so the recommendations can be taken seriously. I'm just concerned whether or not we have that assessing time and are able to evaluate both reports here.

The Chair: Mr Richmond referred to this. I've only been here nine years, but this is the third review of the Ontario Food Terminal—

Interjection.

The Chair: Is it the fifth in nine years? It's the third since I've been here anyway. The point is that maybe it is telling this committee something, that the Ontario Food Terminal comes up for review and then it comes up for review again. Maybe this would be an opportunity for the committee to do something that was in depth and constructive, and maybe you do need to spend some time formulating the direction you want to give Mr Richmond in drafting the beginning of the report. I'm at the direction of the committee here.

Mr Marchese: I would be personally prepared to say let's postpone the discussion of this if the opposition members say, "Yes, we need more time to reflect on both what the board members have produced and what the researcher has given to us today." If that's their desire, I'm perfectly all right to go along with that.

I was prepared to say something quite different, by way of making a recommendation, but rather than getting into what I would have been prepared to recommend, if the members want to put that discussion off, then I would not get into that discussion and would say yes, let's put it off if that's what the opposition members want to do.

Mr Bradley: You've whetted our interest now.

Mr McLean: This is the third time I've been through this. The perpetual leases were always a major issue, but every legal advice we ever got said we'd be in trouble if we tried to change it. So you're either going to take the bull by the horns and make some recommendations of changing it—my observation is that we should be dealing with an option of internal housekeeping to try and satisfy some of the concerns the board brought to us.

I would like the ministry to have a look at the changes they made to the act to try and see if it is possible to do that. I'd like to see some cooperation that it can be done and not just put off and off and off. It appears to me that the board feels it is a priority that we do something. I would like to see some minor amendments to try and do it.

The Chair: What you would like to see is a response from the ministry to this presentation from the Ontario Food Terminal that we just received this morning.

Ms Carter: I think the first thing to point out is that in fact this food terminal is doing a very good job. It's doing an excellent job and there only seems to be the one really major point at issue, which is the question of the Ontario produce only at the farmers' market. The other things are relatively minor.

What I'd like to suggest is that we don't reopen the act because I think there are downsides to that, one of which is this whole question of whether it would be perceived as a trade barrier or not under our new NAFTA agreement and so on. That would then come into the picture. I understand that the board hasn't had much in the way of discussions with the ministry on this particular issue and that there's still scope for it to do that and maybe to solve this problem through regulations. Apparently the judge actually said they could've made a regulation to control this issue. I think in any case it would be better to have it as an internal policy rather than something that is dependent on the change to the legislation, if that can be managed.

I think that is what needs to be looked into, rather than just adopting what the food terminal board themselves have said, and looking at the legislation, at this point.

1220

The Chair: You're asking for it to be looked into, which is the same thing really that Mr McLean is asking for, so you can find out what the boundary of the committee's scope is actually.

Mr Frankford: I was going to ask—or I would do my own homework—to get some indication of what the previous reports have looked at and emphasized. I hear the question about the perpetual leases. I don't know if there were any other—

Mr McLean: It's all on the record.

Mr Frankford: Okay. I will be happy to take the time to look it up myself. I'm not quite sure why it was chosen yet again, although I think it's a very interesting agency. It probably does a great deal more than we've really recognized. It seems to me it's probably a very fine balance at the moment. Things could be changed, but if one pulls something out, this would perhaps upset that balance.

The Chair: This agency was selected by the government members of this committee; that was their choice, in case you didn't know that.

Mr Frankford: It seems to me that it really has a very broad economic impact. It is the primary market for the entire province. It seems to me that it serves a valuable function for the smaller ethnic markets which are developing. It probably has a very strong economic stimulus role. It makes me think of Jane Jacobs and her contention that it's cities that produce agriculture and not the other way around.

The one question, as Mrs Carter mentioned, that the board was concerned about was this question of Ontario-only farmers' markets. I'm sure that's something we would very much like to encourage, but I am afraid there is the possibility that this would upset the whole fine balance by possibly opening up questions about international trade rules. I would certainly be very happy to receive more discussion and to know what the ministry's position is on this.

Mr Cleary: It's going to be hard not to repeat here because I agree with some of the previous speakers. I think the terminal has served its purpose well. It's done what it was set up to do. There are not many things

that've been in place since 1946 that haven't been changed, and probably need changing. They mentioned the ethnic market and different things like that.

I guess what I would like to see is the downside of what Mr McLean had mentioned, and that was the bottom one on the front page, that "a possible option is to proceed with interim housekeeping." I would like to see the downside of that if there is one.

Mr Marchese: Given what Mr McLean said, perhaps I, too, would comment on that. Part of the essential question for me, from yesterday's meeting was, do we need to change the act or not? These are the questions the researcher also raises in his two points. That's what we need to answer before doing anything.

My feeling is, and I raised this question yesterday, although the lawyer didn't quite agree, that we should look at the change on the regulation-making powers as a way of getting to all of the issues that were raised. My sense is that we can do that.

We should proceed to look at all the questions that have been raised, particularly with restricting the sale of produce in the farmers' market section to the Ontario-grown only. We should move to that because I support that and I suspect all the committee members support that. I think we should look at that within the context of regulation-making powers.

All the other questions are also in here, which the researcher has identified—conflict of interest; I believe fees were mentioned yesterday as a matter and I'm not sure whether you mention that in your research, but these are questions of regulation-making powers that were under question or doubt and it's here. All of the questions that have been raised are in here, including the whole notion of the perpetual leases. I wouldn't mind asking the ministry to look at the pros and cons of that because we haven't done any research, or to look at the whole question of what are the advantages and disadvantages of doing that in a way that would allow the members to make a wise judgement on whether or not that's good to do.

We should be studying the issue as a way of saying, "Will this affect the market or not, or in what way might it affect the market?" That would be by way of looking at disadvantages, and if there are advantages to doing that, we should also be studying that, but we need that before we can make a judgement. It's here as an issue that the ministry should be looking at, which we can then, as a committee, also address once they've done that, including privatization. We haven't done any studies that speak to this issue by way of looking at advantages or disadvantages of this. I might be interested in looking at this matter because in a way it's running as a private system right now. The only difference is it's a government agency, but it's really running as a private system at the moment.

The Chair: On government land.

Mr Marchese: The land is ours, obviously. That's the issue we would have to look at when we look at privatization or not.

But I wouldn't mind looking at some study that looks

at that issue, and it's all here. All the issues are raised here, including what the role of the government should be in relation to the Ontario Food Terminal. I wouldn't mind us getting their opinion or study on that matter.

All the issues are here. Looking at the options, I say the general option the researcher has identified is the direction I want it to move in, and I think other members are moving in that direction as well, and that is looking at the housekeeping amendments, which Mr McLean spoke to, changing the regulation-making powers and/or the regulations pertaining to OFT, more specific regulation-making authority, direction to the OFT and the Minister of Agriculture and Food to change operating procedures and internal—all of that, I think, can be accomplished and should be the option we should be looking at.

If all of that fails, once we've looked at that, then we as a committee should seriously suggest that the act should be looked at, because clearly the regulations were not working, but I see that as an option down the line. I think we should move on that option. I support what Mr McLean was saying as well and perhaps we might clearly get a direction from the Liberals on this as well.

Mr Curling: I told you the first time that we can't consider it today.

The Chair: Then shall we agree that we ask for a response?

Ms Murdock: Mr Bradley wanted to speak.

Mr Bradley: On this issue, I think there is an important direction we're aiming at now. I'm also interested, I must say, in what the Minister of Agriculture and Food has to say because very often you get a different point of view from an organization which has viewed this for a long period of time.

I think Mr Richmond has identified a number of very important issues to deal with. The one question that perhaps superimposes itself upon this whole discussion is that of whether legislation or regulation can deal with this.

I had a little bit of a period of time to stay later at the food terminal and I discussed this issue at some length with the individuals there. The impression we got as a committee was certainly that they felt legislation was going to be required. I indicated clearly to them that the fastest way and the most efficient way to deal with it, if there's a consensus in the committee, is by regulation. It also raises the fewest red flags with our friends to the south.

If this can be accomplished through regulation, even though I'm one who believes government shouldn't always move by regulation, I feel that a lot of this can be done by regulation.

The second option, of housekeeping, is the second most attractive option. I think to open the whole act up may be some problem.

1230

The Chair: I think there's certainly consensus on what it is you're all interested in. Do you want to do it by a formal motion to ask for the response from the ministry or do you want us just to do a letter to the

ministry via the clerk's office? I think maybe we should have a motion so that we know what it is you're asking the ministry for.

Mr Curling: We could have a motion. McLean will start it off.

Mr McLean: I think what we should do is recommend to our researcher that it's item 3, or the last one—some minor amendments would be what we would be looking at—and that he should be in touch with the Ministry of Agriculture to try and help him draft us back a recommendation that we feel would be acceptable and would pass as an amendment.

Mr Curling: You're moving that motion?

Mr McLean: I'll move that motion.

Mr Curling: I'll second it.

The Chair: You're asking for a draft amendment to the act?

Mr McLean: Which would incorporate what the board is kind of looking at, but I would want it done in cooperation with the ministry. There's no point in going through the whole process and the ministry says: "That's no good. It's out."

The Chair: But that's a little different. What you asked for earlier—

Mr Marchese: Not an amendment to the act. To the regulations.

Mr McLean: I don't care, but I want him to look into what we can do.

The Chair: I think what you need is a response from the ministry to this submission from the Ontario Food Terminal Board. It makes sense that the ministry is going to give you a response to all of this.

Mr Curling: I heard Mr McLean say a bit more: not only a response, but if we're going into the direction of regulation, for them also to say that wherever they see that regulations can be made in order to make it effective, that's the direction we want to go. But we want some comments from the ministry.

Ms Harrington: But we're not asking for an amendment to the act.

Mr Curling: Yes.

The Chair: Not at this point, I don't think.

Mr McLean: We're asking our researcher to look into the possibility of how we're going to incorporate this in some form or another in a recommendation that we would make to the ministry. That's all we can do.

The Chair: Then we agree, from the direction from the committee this morning, that Mr Richmond will deal directly with the ministry to establish what the recommendations should be in the draft report to address those areas you've all spoken about, and when the draft report comes back, then we'll find out how you can do it.

Mr Marchese: That would be fine.

The Chair: You can debate it then.

Mr Marchese: To add, though, by way of preamble, I think we can communicate to them in addition that the committee is interested in changing the regulations so as to allow them to deal with the matters that have been

raised, and the critical areas that were raised have to do with restricting the sale of produce in the farmers' market to Ontario-grown only and the other matters of conflict of interest and the fees. These were the critical points they raised. As a preamble, I think we should state that we want to change the regulations to deal with those and other matters that are raised on the other page, and then simply ask for the ministry's comment on that and other matters in terms of how we proceed.

The Chair: Do you think you would like to have another meeting before you review the draft report? Would you like Mr Richmond to be able to report back to you before he actually starts to draft that report?

Mr Curling: Yes.

The Chair: Is that what you'd like?

Mr McLean: I think he's got enough to draft a report.

The Chair: I'm asking you what you'd like, Mr Richmond.

Mr Richmond: With all due respect, Madam Chair, I'm a bit confused, if I could use that word. I wonder whether the committee may want to direct the Chairman to write to the Minister of Agriculture and Food on behalf of the committee, asking for some direction on both the food terminal's draft and the issues raised in my memo. I'm just proposing this.

If the Chairman wrote to the minister or the ministry, and the minister or ministry would respond to the committee, indicating those areas—I sense that one of the themes the committee would want primarily is to get what the opinion is technically of the ministry on these issues and then to get a sense from the ministry of which ones it feels can be best addressed through regulation.

The Chair: I think the thing that's happening here, in fairness to the committee, is that normally there would be a draft report that the ministry would respond to. What we're asking here is for the ministry to respond to the questions raised by the committee before the committee drafts its report. That is a little different.

Mr Marchese: That would be fine. I'm not sure what the other members have to say. I was saying I had an opinion about a preamble that says the committee members are very interested in changing the regulations to deal with some of the questions that have been raised, and I mentioned three. I think there was agreement around that.

Around other issues, there may not be any agreement. They're matters that are raised that will solicit further debate, not just in the ministry and in its consultation with other people, but within our own caucuses. That's another matter to be dealt with, but we would appreciate their opinion on those as well. But as a preamble, we want to say that we're interested in changing the regulation around some of these issues that affect the terminal and stating that as a matter of principle. I'm not sure if the other members agree.

The Chair: I think what Mr Richmond is saying to you is that he would prefer that direction to the minister to come from the committee rather than from him.

Mr Cleary: Madam Chairman, I guess everybody's going to jump in here, but I would move what Mr Richmond said. I think it's a good start.

Mr Richmond: One possibility: The clerk and I, with the committee's direction, would certainly work with you, Madam Chairman—we'd have to review today's transcripts and we have this documentation too—to compose a letter that the Chairman would send to the minister. Subject to your direction, I am certainly willing, as I'm sure Lynn is, if need be, if the ministry wants to meet with Lynn and myself to discuss that letter, to meet on the committee's behalf with officials from the Ministry of Agriculture and Food. I'm not saying I'm not willing. I'm just saying that I think the committee's probably in a stronger position if the communication comes from the committee through the Chairman.

Mr Curling: I was trying to get your attention because you had asked, "What is our direction?" The reason I raised this in the beginning is that first I heard from the Ontario Food Terminal that there are certain things it has proceeded with. They lost in court and they think that if they exercise these things, they'd have lost in court whether or not—the judge told them, "You can't because you come here with a regulation and feel that by regulation you can change your mandate." I think I heard that from them.

Now here they are presenting a couple of things they'd like to see changed. You have put some options to us to consider, whether we go through legislation or regulation. When I made the comment to you at the beginning, it was to say I'm not quite sure that the things they're saying here can be accommodated in regulation. I'm speaking as a layperson, not a lawyer.

I'm saying that we could get some response from the minister and from the legal body on the things they're asking for here. Maybe we don't have problems accommodating them, but we're not quite sure whether we can accommodate them through regulation or through legislation. Let us not go through that cycle.

Therefore, could you comment then, understanding that some guidelines, excellent things that research has told us to look for, what direction we are going—could you comment back so we could proceed in making a report?

The Chair: I'm going to get our clerk to tell you what she's going to include in the letter to the minister.

Mr Marchese: Before you do that, could I make a brief point?

The Chair: Go ahead.

Mr Marchese: The policy just raised something that I thought was useful as well. Is the committee interested in listening to ministry officials as well with respect to this, or the lawyer of that ministry? Perhaps that might give us a face-to-face encounter with them and we could submit this to them and then have a meeting with ministry officials and the lawyer to be able to raise this in person with them. Is the committee interested in that? We could do this simultaneously, by the way.

Mr McLean: It's not our job. Our job is to make recommendations.

Mr Marchese: Fine.

Mr McLean: Then we'll have to continue the hearings.

Mr Marchese: The point I raise is that what we would get is exactly what we would get, presumably, from having them in front of this committee; it's the same job.

Mr Curling: We're saying if they can direct such a letter. They can have these papers. They don't need to tell us; they can respond through these. We don't need to have a hearing again.

Mr Marchese: Sure, I support you.

The Chair: Let's listen to the clerk.

Clerk of the Committee: What I would include in the letter to the minister would be a copy of today's Hansard, the notes that Jerry submitted and the draft that was received from the Ontario Food Terminal, asking them for their comments—when reviewing the Hansard, I'll get the specifics into the letter—and to have that documentation back to us by the end of February. Then you will have the material in time to go over the draft report with Jerry when the House comes back, whenever you determine you're going to do that draft report, and you will have had time to look at it and caucus it and you'll all be able to have a position on it.

The Chair: Okay, that's very clear. Is there agreement on that?

Mr Marchese: Sure.

Mr Curling: Agreed.

Mr Richmond: I didn't realize I was going to be on. I came over here before lunch just to distribute this memo. There has been reference to a lot of background documents, corporate plans, things like that. There's a memorandum of understanding. There's my background briefing paper. As to the background briefing paper, not to flog things that I've done, I really think that if you don't have that, you should have a copy of that to take back for yourselves and your caucus. If you're going to stick around, if we do adjourn, I could run over to my office and bring some over.

The Chair: We can just send it to their offices.

Ms Murdock: To those people who are normally on the committee.

Mr Richmond: Some of you should have it.

The Chair: Those members who are dealing with the WCB, so that would be you.

Ms Murdock: Yes, but this isn't WCB.

The Chair: Oh, the Ontario Food Terminal.

Ms Murdock: I'm not normally on this committee.

The Chair: I don't think we have any more questions on the Ontario Food Terminal report drafting at this point in the meeting. Unless there are any other items of business of the whole committee this morning, we will adjourn the whole committee and have a meeting of the subcommittee. Are there any questions of general business for the whole committee? Seeing none, then we will adjourn the committee meeting for today. Thank you for your attendance. We'll have our subcommittee meeting.

The committee adjourned at 1244.

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- ***Vice-Chair / Vice-Président:** McLean, Allan K. (Simcoe East/-Est PC)
- *Bradley, James J. (St Catharines L)
- *Carter, Jenny (Peterborough ND)
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- Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
- Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Abel, Donald (Wentworth North/-Nord ND) for Mr Mammoliti
Murdock, Sharon (Sudbury ND) for Mr Waters

Also taking part / Autres participants et participantes:

Eady, Don, special assistant, policy, Ministry of Labour
Holder, Marianne, special assistant, legislative, Ministry of Agriculture and Food

Clerk / Greffière: Mellor, Lynn

Staff / Personnel:

Richmond, Jerry, research officer, Legislative Research Service
Yeager, Lewis, research officer, Legislative Research Service



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Standing committee on
government agencies



Comité permanent des
organismes gouvernementaux

Ontario Human Rights Commission

Commission ontarienne
des droits de la personne

Chair: Margaret Marland
Clerk: Lynn Mellor

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 1 February 1994

The committee, following a closed session, met at 1035 in the Trent Room, Macdonald Block, Toronto.

The Chair (Mrs Margaret Marland): I call this meeting to order, to commence the review of the government agency known as the Ontario Human Rights Commission.

I bring to your attention that one of the selections, Mr Winston Hollis, an appointment to the Niagara Escarpment Commission, was a selection made by the third party and it has been withdrawn because it was a municipal appointment, not a provincial one, which makes sense.

SUBCOMMITTEE REPORT

The Chair: Just before we start the review and my welcoming the people who are taking part in it, we do have a subcommittee report to approve, and it was moved by Ms Harrington. Is there any discussion on that subcommittee report?

All in favour of the subcommittee report? Opposed, if any? That is carried.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair: Good morning, Ms Brown, and welcome to the committee. We're happy to see you here this morning. Do you wish to make an opening statement?

Ms Rosemary Brown: Yes, thank you very much. Good morning, Madam Chair and members of the committee. I want to start out by apologizing that I have fallen victim to Ontario's flu, so if my voice sounds a little bit more sexy than usual, it's not that I'm trying to seduce you but that in fact I have a cold.

Thank you very much for inviting the commission to appear before you again for the second time in seven months, because we're very anxious that you should hear what we've been trying to do over at 400 University Avenue and all of our other commission offices.

The Ontario Human Rights Commission, as you know, exists for one purpose: It exists to ensure the primacy of human dignity. Although public sector agencies in general acknowledge the need to provide good customer service, the commission has a specific accountability for placing people first. This flows from the preamble of the code, which recognizes the inherent dignity and worth of every person and enacts as public policy "the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and wellbeing of the community and the province."

In essence, this quasi-constitutional legislation affirms that each member of our community is essential and that no one may be treated as a mere means to an end. Rather, it states boldly that all of us have an inherent dignity which must be nurtured and expressed in all forms of social interaction. It is the business of legislators

and public servants alike to ensure that the primacy of dignity is given force and effect in public policy.

The Lieutenant Governor, upon the recommendation of this committee and the executive council, has conferred upon me the awesome form of accountability for the preservation and advancement of this public policy. I appear before you today, and through you to the people of Ontario, to speak of the innovative ways in which the commission's purpose is being discerned and fulfilled.

The people of Ontario expect the Human Rights Commission to preserve their rights and to do so in a just and effective manner. The Ontario Human Rights Commission was created to be the anvil against which a culture of personal dignity could be formed. It is a place where competing interests collide, where people who have been silenced, whose communities may have been silenced for generations, come forward to assert their intrinsic worth.

Issues which define the scope of our humanity and the maturity of our civilization are confronted daily throughout the agency, and what is true for all public sector professionals and agencies is especially true for the commission and its staff, namely, that the interests of the agency reflect, respect and uphold the dignity of the people we serve.

As of December 31, 1993, the commission was carrying a case load of 2,156 files, 808 of which were pending investigation. The parties to these files have a right to expect a timely, fair and thorough investigation of their complaints, but it is clear that their expectations are frequently unmet. Various attempts have been made to make immediate and radical changes in the way human rights is enforced in this province, but the circumstances which confront us have not admitted to any instant solutions. Also, there has been concern about the integrity of the commission itself, about the quality of its investigations and the quality of its working environment.

The commission has itself acknowledged that it is a creature of society and that it is not immune to the insidious effects of intolerance. Persistently, attempts to improve the efficiency and effectiveness of the commission from the outside in have met with limited success. However, as a gardener myself and a former politician, I know that the only changes which last are those which happen from the inside out. This is the secret of all quiet revolutions, which is why I believe that there is cause for optimism in the deliberate and methodical agenda for change which has now been initiated at the commission.

The commission has articulated and commenced the implementation of a series of eight organizational improvement initiatives. These measures are intended to effect meaningful and tangible reforms in the way that the commission conducts its business. Specifically, the commission is (1) implementing a quality and quantity assurance system; (2) establishing a coherent and mean-

ingful customer service program; (3) streamlining and enhancing its enforcement procedures; (4) using technology to become more efficient and productive; (5) creating a lean and rational organizational structure; (6) defining and preserving clear standards of accountability; (7) supporting all staff through relevant and respectful training and development; and (8) acting decisively to ensure organizational health, including the use of sound anti-racism principles.

These measures are being implemented concurrently and are intended to complement and support each other. This agenda for change is fundamental and it is dramatic, because it will provide the tools that we need to serve the primacy of human dignity. But it will not yield results overnight. Instead, it is the beginning of a rigorous path to a more effective and efficient agency and it is the best and most reliable form of change—that is, change from the inside out.

For example, the commission's new quality and quantity assurance system establishes clear standards for the investigation and analysis of human rights complaints. The system places a clear emphasis on the maintenance of high standards of quality throughout each phase of the commission's procedure. Intake guidelines have been developed to ensure a consistent approach to all facets of the intake process across the province. The use of a formal investigative plan is now mandatory in all cases. This ensures a rational and methodical approach to a complainant's allegations and must integrate all relevant issues of a public policy or systemic nature. Our offices have also received clear guidance to enable them to make more effective use of warrants and other relevant provisions of the Human Rights Code.

In order to ensure that the emphasis on quality does not cause an inordinate delay in the processing of human rights complaints, the commission has developed rigorous standards for the quantity of case work produced by our staff. For the first time, each regional manager is accountable for the closure of a specific number of cases in the fiscal year.

This fine balance of quality and quantity forms the basis of the accountability of the commission's staff. The commissioners and I receive a comprehensive report as to their progress every six weeks, and it's here in our staff report. Over the past several months, we have noticed an appreciable improvement in the quality of analysis, information and advice concerning cases which have been presented to us for disposition under the code.

Secondly, the commission's customer service program involved a clarification of our duty to place the dignity of the people we serve above all other considerations. This is set out in a document entitled *Commitment to Service*, and you have carbon copies of it, I think. This document is posted in our 16 offices throughout the province. Itself a product of consultation with the staff of the commission, the *Commitment to Service* provides an unclouded, understandable declaration of each staff member's expected commitment to service. Each member of the commission staff has been given clearly documented direction concerning the application of the *Commitment to Service* to their specific roles and responsibilities.

The *Commitment to Service* reflects our best efforts to provide excellent customer service by, among other things, being sensitive, aware and knowledgeable about the realities of prejudice and discrimination, and recognizing and accommodating the diverse needs of our many client groups.

In a related development, front-line staff of the commission have been trained to provide service to customers with special needs, emphasizing the need to be respectful of the fact that many people who come to us may be justifiably angry and frustrated and under a great deal of stress. This training had a strong cross-cultural component. It was aimed at sensitizing staff to the issues as well as to promoting their own sense of security as they deal with challenging situations involving customers who may for any number of reasons be upset.

Although this measure is integral to the commission's agenda for service, it is also crucial for the health and safety of our staff. Consider that the front-line staff of the commission in the last fiscal year—that's March 1992 to March 1993—addressed 116,308 inquiries and made 28,723 referrals to other resources. Answering this demand requires stamina, skill, knowledge and a keen mind. In more personal terms, it requires patience, sensitivity and empathy. I am pleased that we have begun to provide our front-line staff with meaningful support. We have recognized as an agency that taking the time to serve people well and with respect when they first meet the commission eases the stress of an adversarial process. It encourages trust, fosters clear communications and makes very good use of the commission's resources.

In my experience, the most tangible aspect of the customer service program is the emphasis placed on taking seriously the concerns that people have about their experiences with the commission. I am aware of the considerable amount of time which staff have spent in hearing complaints of people who feel that they have not been well served by us. For example, in exceptional situations involving allegations of professional misconduct, the executive director will himself intervene to direct an impartial review of the matter by commission staff.

Measure number three: The commission has endorsed a number of changes to its enforcement procedures which do not require amendments to the code. For example, the agency has streamlined its investigations and established clear time lines for each distinct activity in the resolution of a file. Officers are accountable for using their time well, and for some time now the commission has been resolving the lion's share of matters brought to its attention before the filing of a formal complaint by the means of the early settlement initiative. Actually, 67% of the cases which come to us never become a formal complaint because they are resolved at this stage. This procedure allows the parties the opportunity to resolve their concerns prior to or instead of—many of these are withdrawn—initiating formal proceedings. It makes sound strategic use of the commission's limited resources.

Very often, however, the process has been sluggish. In order to improve the situation, a 90-day limit has been imposed on the use of the early settlement initiative. Now

our officers are held accountable for their performance within that time line.

The commission is also making more rigorous use of its discretion under section 34(1)(a) of the code to decline carriage of complaints if they are complaints which could or should appropriately be dealt with under another act.

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Initiative four: The commission has begun to make aggressive use of technology. This has required some fairly basic first steps, but for the first time in the history of the agency all of the commission's officers have use of reliable computers. A peer support program has been implemented in order to ensure that the officers receive training in the use of technology which is geared to the actual demands of their workday. The agency is also using technology to monitor the movement of its files through the investigative time frame. A great deal of effort has been invested into assuring the integrity of the commission's case load data. We're beginning to explore ways in which technology may be used to enhance our level of service through such avenues as periodic bulletins advising parties of the status of their files. As this work continues, the commission ensures that the confidentiality of all personal information is still strictly preserved.

The fifth initiative involves the redesign of the organizational structure of the commission. Previously, the agency was composed of seven units, each headed by a director. This configuration blurred the lines of accountability, did not make strategic use of the commission's resources and resulted in a secondary emphasis on the need to provide good customer service. In fact, in the reports of both the organizational health and effectiveness committee and the anti-racism committee, the commission's staff expressed a consensus on the need for change in the structure of the agency. This call for change has been echoed in the communities that are served by the commission and it has been clearly articulated by the members of the Legislative Assembly themselves. It was my privilege and that of my executive director to meet earlier with the critics of the Liberal and Conservative caucuses to brief them on this very crucial development.

The agency has now been organized into four new branches, from seven:

There's a regional services and systemic investigative branch, which has been created to make the best use of the commission's enforcement resources.

There's a public policy and public education branch, which has been created to provide the people of Ontario with clear and accessible expertise in human rights principles. This requires a balance of vision and utility, an ability to provide useful and uncompromising guidance in human rights.

The commission has developed a new legal services branch, which houses the office of reconsideration and preserves its ability to audit the work of officers in the regional services and systemic investigation branch.

The corporate services branch will act as a catalyst for change at the commission, leading its efforts to become a model employer and ensuring excellence in customer

service. The new structure of the commission is sound and relevant because it has been developed thoughtfully. It shows the commission has listened and paid careful attention to the concerns of the people we serve. It shows the wisdom of making change happen from the inside out. To date, all efforts to work in the opposite direction—that is, from the outside in—have failed to inspire such comprehensive renewal. Where others have worked against the grain, the commission's senior management committee has succeeded in developing an organizational structure which entrenches the commission's orientation to customer service, consolidates and strengthens all enforcement functions, clarifies the lines of accountability, enhances the ability of the commission to become a model employer, and ensures the commission's effectiveness in the promotion of human rights by integrating policy development and public education.

At this time, the staffing of these branches has proceeded only to the director level. The reorganization of each branch will proceed below the senior executive level once each directorship is filled. I would like to underscore that the recruitment of the commission's new directors has used and will continue to use sound human resources management practices, including employment equity. At present, two of the four new directorships have been filled. The commission has found within its ranks a director of regional services and systemic investigation, Mr Neil Edwards, and the commission's director of corporate services is someone new to the agency. I look forward to the fresh and innovative leadership that she will be bringing with her.

The selection process for the position of director, legal services branch, is still under way and the agency has begun an unprecedented outreach throughout the province to identify candidates for the director of public policy and public education. This includes the publication of the competition in the *Globe and Mail* and 30 newspapers which serve designated groups in addition to conveying information about the competition through 231 community organizations. Consistent with the values of a model employer, this process will progress in an open and equitable manner. It has been and will continue to be rigorous, comprehensive and objective.

The commission's sixth initiative involves a clarification and enhancement of the accountability of all staff. The commission's quality and quantity assurance system and the customer service program have set out clear standards to guide the performance of staff. These measures provide the staff of the commission with sound direction as to what is expected of them. At the same time, an exceptional effort is being made to provide staff with the resources which they need in order to do their job.

Close attention has been paid to ensuring that all of our staff have ready access to important corporate information. The staff of the commission have consistently expressed in the past concern about the flow of information at the agency. It has been criticized for being selective, exclusive and sometimes inaccurate. This problem has been corrected through the periodic publication again of the Staff Report. The Staff Report is itself a tool of accountability, since it provides all people

responsible for the enforcement of the code, from front-line staff to the commissioners and myself, with current and comprehensive information about all of the commission's activities.

This report enables the staff of the commission to see with greater clarity how their work relates to the work of their colleagues and to the health of the agency. In addition, because we have acknowledged to all the staff the importance of their work and assured them that they will continue to receive meaningful support, we are confident that a culture of service and professional pride will be fostered in the commission.

Since my appointment as chief commissioner several months ago, a full 74 person-days have been invested in devising new training programs for the staff of the commission. This agenda has included two basic investigative skills conferences, a technology mentoring program, course screening which enhances the referral skills of support staff and a course workshop on serving challenging customers. The results have been encouraging. Over the last seven months, the staff of the commission have received a total of 308 person-days in training and development. This marks the beginning of a series of training initiatives which will reinforce essential skills in the execution of the commission's functions.

There has also been a fundamental change in the way training is being done. For the first time, adult learning principles are being applied in a cohesive manner. Hence, we are well on the way to becoming a learning organization, one which fosters continuous improvement and encourages staff to support and to learn from each other as they encounter and resolve the many challenges in their field.

The commission's final, eighth, organizational improvement initiative implements the agency's commitment to organizational health, including the use of sound anti-racism principles. The commission's senior management committee is concluding a painstaking review of 67 recommendations made in a report of the agency's Anti-Racism Advisory Committee. It is important that this work be done well so that anti-racism principles are defined which advance the basic tenets of justice. The senior management committee will also ensure that these principles are included in each and every aspect of the commission's program of organizational renewal.

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We have also dedicated considerable care to the development of a series of guidelines intended to assist in the investigation and analysis of cases based on race. The sophistication of the subtlety and pervasiveness of racism is only now being acknowledged publicly. We now know that the crudity of signs saying "whites only" has been replaced by various and insidious restrictions which ensure that regardless of accomplishment or merit, the whites-only policy still applies in many circumstances, keeping doors closed to persons because of the colour of their skin.

Therefore, to root out and expose this fine screen of illicit limitations, the commission is exercising particular and close scrutiny to the way it addresses complaints based on race. The staff of the commission have worked

together to develop tools which are both just and sensitive to the reality of racism. This month, the commission will consolidate this work in a body of guidelines which will refine its approach to cases based on race from intake through to the boards of inquiry.

Integrating anti-racism principles in the overall renewal of the commission is an important development because it helps us to ensure that we put all people first.

As I conclude my comments about the eight organizational improvement initiatives, let me observe that there are no simple or quick answers to the difficulties which confront the commission. I believe that the only way to ensure the stability, effectiveness, health and compassion of the commission is to lead it through this agenda for change, which is stable, effective, healthy and empathetic, and to do this from the inside out.

The organizational improvement initiatives constitute a beginning, a point of departure. They may even raise more questions than they resolve, but often the best solution to a problem leads to a host of new issues. I have no doubt but that the commission will continue to be challenged and that its successes will lead to an increased demand for its services, so carefully and pragmatically we are watching to ensure that the organizational improvement initiatives bear fruit.

Let me share with you a citing of some of the early results. It is projected that on March 31 of this year of our Lord, 1994, for the first time in five years there will be less than 250 files older than three years of age in the commission's case load—a minor miracle, I'm sure you'll agree. Sixty-seven per cent of all the cases closed, as I mentioned earlier, thus far this year were closed in less than six months—another minor miracle—and the commission will close all remaining files from the original case load reduction task force by the end of this fiscal year—another minor miracle.

We have also undertaken initiatives to encourage voluntary compliance with the code. The staff of the commission successfully concluded negotiations with the Ministry of the Attorney General and the Ministry of Government Services to ensure that people with disabilities have access to the province's courthouses. The agency is currently providing information and advice to the city of Toronto concerning the recruitment and selection of firefighters.

The commission has also published two useful and instructive documents. One, Teaching Human Rights in Ontario, will be providing the province's public and private secondary schools with this resource. It is my hope that this material will help teachers to feed the optimism of youth and the instinct of most young people for tolerance and social justice. The second is a policy statement on the subject of sexual harassment and inappropriate gender-related comment and conduct.

This marks the beginning of what I hope will be a long and fruitful exploration of new ways in which a commission can be of assistance to public sector agencies, to private enterprise and to trade unions. I look forward to many such cooperative ventures, since they make strategic use of the commission's resources and advance the principles of the code in innovative ways.

Ontario has established an honourable tradition of spelling out in law the practical implications of the primacy of dignity. This tradition is evident in five recent cases which I would like you to consider.

It is a well-established principle in human rights laws that employers, unions and service providers have a duty to accommodate needs arising from grounds enumerated in the code. This was reinforced in the case of Marnie Elliott. Miss Elliott uses a motorized wheelchair and a van with a lift for mobility. Physical barriers denied her access to a restaurant in a strip mall. A board of inquiry has ordered the mall to ensure that its facilities are accessible to people with disabilities and awarded Miss Elliott \$1,000 for damages to her dignity.

Our society is just beginning to grapple with the issues arising from an aging population. Mr Allan McKee alleged discrimination on the basis of age when, after 32 years as an employee of a corporation, he was told that there would be a permanent staff reduction. A board of inquiry found that Mr McKee was forced into early retirement because of his age, and he was awarded \$246,362 in damages, representing the eight years of lost wages.

In the case of Michael Leshner, a board of inquiry found that a pension plan which denied survivor benefits to the partners of lesbian and gay employees was discriminatory, even though the Human Rights Code defines "marital status" to include only couples of the opposite sex. The board found that the definition of "marital status" in the code in fact violated the equality guarantee in the Canadian Charter of Rights and Freedoms.

In a separate development, Elizabeth Clinton complained to the commission that her employer had denied her group insurance benefits because she is a lesbian. A board of inquiry ruled that Miss Clinton was discriminated against because of her sexual orientation. Contrary to the decision involving Mr Leshner, the board found that it was not necessary to revisit the definition of "spouse" in the code in order to establish that gays and lesbians have the right to equal treatment in all employment benefits.

The last case which I wish to report concerns the experience of Garnet Angeconeb. Mr Angeconeb, a native Canadian, was assigned inadequate and inferior accommodation at an inn in Red Lake, Ontario. A board of inquiry concluded that the inn did in fact discriminate against people of native ancestry by making them stay in special, second-rate rooms. The board ordered that Mr Angeconeb be paid restitution for damage to his dignity and sense of self-worth.

Recognizing that the protection of human rights is not constrained by geographic boundaries, let me add that the commission is also contributing to Canada's international reputation as a stalwart advocate of human rights. The country of Bermuda has twice sought the commission's assistance in establishing and administering its own human rights commission. Our discussions have included such matters as separate enforcement and advocacy functions, especially with regard to racism.

Recently also, the commission received a delegation from South Africa. This visit came at a crucial time in

the history of that troubled nation. The fate of its new democracy depends upon the correction of its human rights imbalances. The commission has been able to assist in this regard by sharing its experiences in administration and promotion of human rights.

We are also active observers, courtesy of the Canadian Human Rights Commission, to Canada's role with the United Nations human rights commission.

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Let me end my introductory remarks by saying that this morning I have attempted to present the clear course of action which the commission has established to set its house in order, to indicate the commission has paid close and respectful attention to the many people who have called for change and that it has responded by initiating a conscientious and decisive program of reforms.

The secret to the commission's renewal is that it is fundamental, comprehensive, sustainable and painstaking, and that it is a transformation which is taking place from the inside out.

The challenge of a diverse society is to have its members live side by side in harmony and mutual respect. History is filled with examples of societies which have failed to meet this challenge. All of Canada's social institutions are committed to achieving this miracle.

We at the Ontario Human Rights Commission are not so arrogant as to believe that our efforts alone can eliminate prejudice and intolerance from the life and culture of this province, but all of our efforts, everything that we do, is dedicated to making this goal a reality through the protection of human rights and the ensuring of the primacy of human dignity.

The Chair: One thing I want to clarify. On the very bottom line of page 16, it's printed in your speech, "the board found that it was not necessary to revisit the definition of 'marital status' in the Human Rights Code."

This morning you actually used the word "spouse" there instead of "marital status." I just want to be clear which it is you want. Obviously, Hansard now records "spouse" and yet the code itself refers to "marital status." I just want to be sure whether you intended to change that wording to "spouse" or not. It's "marital status" in the code.

Ms Rosemary Brown: I think it's safer to actually follow the text of the speech than my reading. I tend to take liberties with the text, but it is "marital status."

The Chair: All right. I just wanted to give you that opportunity. Ms Brown, you brought with you a lot of people this morning, and I'd like to give you the opportunity to introduce everyone who came with you.

Ms Rosemary Brown: I would like to do that and also begin by inviting my executive director, Scott Campbell, to join me, and I gather that after the lunch break an attempt will be made to accommodate the rest of the party.

The Chair: Actually, Ms Brown, if you wish, the first two seats here this morning, although they're sideways on, which isn't ideal, may be used by other people with you this morning.

Ms Rosemary Brown: Can we turn it around? Maybe we could turn those chairs around.

The Chair: No, because of the microphone, but we are getting it changed at lunchtime and we apologize for the inappropriate configuration at this point. You may invite people into these other four seats if you wish for the balance of this morning. Welcome, Mr Campbell.

Ms Rosemary Brown: I prefer not to disrupt the proceedings and to wait until after lunch; then we can have the time to do it properly. I want to introduce you to our new director of regional services and systemic investigations, Neil Edwards, who is with us this morning. Our new director of corporate services has not actually started yet so she is not present, but I wanted to introduce the word "she" before anyone started mentioning the all-male look of the senior management. It's not going to be that way.

Also present are the acting director of public policy and public education, Calvin Bernard, and the acting head of our legal services, Mark Frawley, as well as the director of communications, Alan Shefman. They're going to be joining me after lunch at the table, but also present with me are Maureen Brown, who is a senior writer and information officer, and Chris Duignan, who is the executive coordinator and who should actually be held responsible for organizational improvement initiatives. If you have any complaints about how it's been done, please address them to Chris, not to me.

Also present is Steve Crossman, who is a program analyst with a compulsion for detail, which makes sure all the information which comes out of the commission is accurate. We really feel quite lucky to have Steve.

Present also are my own executive assistant, Dora Nipp, and Scott's executive assistant, Michael Markwick. We'll both tell you that neither of us would get very much done without their vigilance and support.

The Chair: That's everyone who came with you?

Ms Rosemary Brown: Yes. I want to thank you for your patience in allowing me the liberty of those extended opening remarks, but I thought it was important to tell you what we've been doing in the commission over the last seven months so that when you frame your questions you will have some kind of infrastructure from which to work.

The Chair: We thank you for those opening comments. They were important to have on the record at the beginning of this review.

We're going to start the rotation now with the official opposition. Does the committee wish to rotate in 20-minute parcels as usual? Is that agreeable?

Mr Rosario Marchese (Fort York): Fifteen minutes, Madam Chair.

The Chair: Maybe we'll do it 15 this morning, because that's what we're right on.

Mr Alvin Curling (Scarborough North): I want to thank the commissioner for coming in and making a presentation. As a matter of fact, as you mentioned bringing us up to date, it was so important, because the fact is that I was going really on the last annual report.

Some of the questions I had were answered to some respect in your updating, and also through the briefing we got from the research department. I greatly appreciate that you have taken the time to bring us up to date on this.

I know too there are questions that are asked saying, "Here we are again, the second time around in the last seven months," or some comments of the sort that were made. But many changes have been happening to the Human Rights Commission, directly and indirectly.

One of the most important changes that has happened over the last year or so was you coming to the commission. The fact is that I personally felt that was a good move on behalf of the government. I still have great concerns about the resources they've put into that place. To just have a single individual to make all those changes is not enough, but also to have the resources available, and when the changes come about that you do so with such limited resources.

I just want some clarification, though, on certain things I was going through. I'll start with the organizational chart. In the report here, it has you as the chief commissioner and there are no vice-chairs. In the briefing note that was submitted to us by legislative research, it has the chief commissioner and in the same box we have a vice-chair. I'm a bit confused as to where the flow of the chart is going. Do both of you share the same responsibility, or is it another flow that I'm not aware of?

Ms Rosemary Brown: No, we do not share the same responsibility, honourable member. As chief commissioner, as set out in the act, I have certain responsibilities. The vice-chair fills in in my absence and assists me in any way that's necessary. For example, I was down with the flu last week when the commission was meeting and the vice-chair took over responsibility for that. The vice-chair also takes on a number of speaking commitments, because I believe all of the commissioners should be part of the public education process, but certainly he is the first person I think of when an invitation is extended to me that either I am unable to handle or I think he would be a better person to do.

In a number of different ways, mutually agreed on by both of us, the vice-chair's responsibilities are decided. But we do not have the same responsibilities.

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Mr Curling: So the vice-chair does get directions from you as the commissioner?

Ms Rosemary Brown: Yes, and I don't know if we would call it directions. We're mutually respectful of each other, so I wouldn't like to use the word. I guess it's directions, yes.

Mr Curling: I presume the buck stops at you.

Ms Rosemary Brown: Oh, the buck stops here.

Mr Curling: Yes. So you would not in any way change this organizational chart? It's correct as it stands?

Ms Rosemary Brown: No, the organizational chart is not correct as it stands, but how else would you design it? Would you put the vice-chair beside me? If you were to do that, the vice-chair and I would share. In terms of how you explain the vice-chair and the commissioners, that's as good a way of doing it as any.

Mr Curling: My feeling is that if I see one who is a vice-chair coming up, that person would be reporting to the chief or to the chair itself. You spoke about delegation, in other words, speaking engagements and other things that you were unable to do because of pressure of time etc. That individual would report to you what they've done and what you'd like to see done, because there is a structure there and a mandate to follow.

Ms Rosemary Brown: We can clarify this in terms of another chart for you, but really the role of the commissioner is very clearly stated in the act and the role of the commissioners is also stated. The vice-chair simply operates as the person who is there when the chief commissioner is unable to carry out or perform a task.

Mr Curling: I just wanted an understanding. Let me continue to deal with it. There's a section that you call "Legal" in there. In the past, I presume you used to get your counsel—I don't know if in the present it still happens—from the Attorney General, if you need any kind of legal advice. Do you still use lawyers?

Ms Rosemary Brown: No, no, no. Actually, I think what you're exploring is the history of the commission.

Mr Curling: I just want an update. That's why.

Ms Rosemary Brown: The commission has its own legal services. We actually have an acting director now and if you really would like to put some more questions to our acting director, maybe you could address them to Mark and he could clarify for you.

Mr Mark Frawley: Mark Frawley, acting director of legal services. Up till 1988, sir, the commission used counsel at the Ministry of the Attorney General. In 1988 it decided to have its own legal branch and it now has approximately eight lawyers. The lawyers do all of the litigation, the vast majority of the litigation, on behalf of the commission and boards of inquiry and on appellate matters.

Mr Curling: When I was reading I did see a bit of that, where the changes were about to come about. I maybe missed it in my reading; I didn't see when it was transformed and got to that point where you have your own lawyers in there. It's still the matter of process I was asking. If this is happening now, if all that is in full force, and this legal branch fully has its own lawyers and doesn't need to take from the government, because gradually, as you move away and you should move away from being—as a matter of fact, even away from the ministry.

I would love to see and I think our party would like to see a Human Rights Commission that is separate and apart from ministries and government and maybe one day reporting like the Ombudsman to a legislative committee. I just want to know that process. You said now you have your own lawyers. That is fully in force and operating accordingly.

Ms Rosemary Brown: Yes. We actually have an arm's-length relationship with the government and our main contact with the ministry is to speak through the ministry to the Legislature and to the people of Ontario. But we do have an arm's-length relationship with the ministry.

Mr Curling: Commissioner, I'm always concerned about the words "arm's length," because I'm not quite sure how long the arm is at times.

Ms Rosemary Brown: Some arms are longer than others, that's true.

Mr Curling: Yes, and sometimes I wonder with the Human Rights Commission and this minister how long an arm's length she has with it. I have quite good confidence in your carrying out the role itself, but we could pursue a manner where maybe the Human Rights Commission one day answers to a legislative committee instead of a minister. That is something else we can get into later on.

Ms Rosemary Brown: I just want to say that my experience with the ministry has been that at no time has the minister tried to violate our arm's-length relationship. She has been very respectful of it.

Mr Curling: I don't, for one, think that the minister would ever try to violate things within the Human Rights Commission. But we're in the optic game, and people want to perceive that here is a commission, an agency, that is independent and not only is independent but is seen to be independent of a ministry.

The other area in the organizational chart that I would like some comment about is the systemic area. I won't go into details of asking anything of the director today, but having the systemic area there and now that we have a new Employment Equity Commission which takes away quite a lot of the systemic discrimination in employment, does it have an impact, actually the formation of the Employment Equity Commission, on the systemic area within the commission?

Ms Rosemary Brown: I think you actually almost answered that question yourself with the use of the word "employment."

Mr Curling: Yes.

Ms Rosemary Brown: Systemic discrimination occurs in areas other than employment.

Mr Curling: That's right.

Ms Rosemary Brown: We anticipate that our systemic investigation unit is going to continue to be very, very busy.

Mr Curling: I did, in asking that, know that of course the reduction of cases and what have you was reflected in your report and your opening statement, but I'm just saying here too, was most of the systemic discrimination found in the workplace, in employment?

Ms Rosemary Brown: Yes.

Mr Curling: Therefore there is a great reduction in systemic cases coming before the commission.

Ms Rosemary Brown: We're certainly looking forward, once the Employment Equity Commission is up and running and actually working, to the number of systemic cases involving employment that will come before the commission being reduced, but that has not occurred yet.

Mr Curling: Okay. The formation of the Employment Equity Commission which we went through, the long hearing and eventually the legislation, we had hoped,

actually—when I say “we,” our party had hoped, and I presume my colleagues here on the same committee had hoped—that a presentation by the commissioner would have somehow been beneficial to the committee on employment equity. Did you make a presentation before the legislative committee on the employment equity bill when it was going through?

Ms Rosemary Brown: No.

Mr Curling: Do you feel that you should have, because of the importance of that bill; that a commissioner who deals with things like the systemic discrimination area, and here is an agency that is being set up to deal with systemic discrimination in employment; that you could have contributed very much to this legislation, which is not yet proclaimed, of course? We remind the government members here who are going around and talking about what a great day it was that the employment equity legislation has not been proclaimed yet. Do you feel that it would have been helpful to us, because we were, I would say, grappling at times to get some—

Mr Anthony Perruzza (Downsview): What are you saying, Alvin? You didn't like it.

The Chair: No interjections.

Mr Curling: You will learn a lot, Tony, if you listen.

The Chair: Mr Perruzza, we do not wish to have any interjections. Thank you.

Mr Perruzza: You voted against.

Mr Curling: I'm just ignoring him, actually.

Ms Rosemary Brown: In fact if the legislative committee had invited me, I would have been quite happy to attend. But we worked very closely in terms of the development of the bill, in monitoring from the human rights point of view to ensure that the employment equity legislation and human rights legislation worked together to achieve a common goal, which we have, which is the reduction of discrimination in the field of employment. There was really no need for me to appear before the committee unless the committee had wanted me to do so. Then I would have been very happy to do so.

1130

Mr Curling: I may be wrong, but I thought that we had requested the commissioner to come.

Mr Marchese: Alvin, you asked for it.

Mr Curling: You didn't honour it when you were the chairperson?

Ms Rosemary Brown: It's possible that the invitation is in the mail.

Mr Curling: It could be, with the legislation all finished by now. We're not quite sure. It is not yet law. Maybe it is itself.

The Chair: One minute.

Mr Curling: I'm just going to give notice of a question, since there's one minute. This is in regard to actually those who come before the Human Rights Commission who are not quite sure if their case is systemic discrimination to employment or whether it's a personal discrimination.

My concern is that the individual could lose a lot of

time to them if they come to the Human Rights Commission waiting for it to be dealt with and really it's supposed to have gone to the Employment Equity Commission. I'm not quite clear with that. I'd just like to know later on how would you handle a case like that.

Ms Rosemary Brown: Sure. Thank you.

Mr W. Donald Cousens (Markham): The problem in opposition is that we're so busy opposing and criticizing that we just don't take enough time. So before I begin my remarks, I just want to say that, number one, I appreciate the approaches that you are trying to take and the kinds of things you said this morning in your presentation. I think you've brought good expertise and you seem to have excellent support from your staff and the team around you. You're never going to do anything unless you have a good leader and a commitment from genuinely well-trained professional people.

I have to say that what you say and the kinds of things that you're moving towards are really in the kind of direction that we all want to see, certainly from our caucus. I personally have appreciated your personal availability and that of Scott as well. I mean, there's a sense there that I think you've really been in a pressure tank for a long, long time. The whole commission has and the whole staff has.

I think we want to make sure that we understand that we have a commitment as a caucus to the same fundamental objectives of the code and very, very much want to support those initiatives. Your emphasis on the racial intolerance and the problems that we've got to address that are endemic to society are commitments that Mike Harris and our caucus have as well.

When I start getting critical now with some of my questions and other things, I feel that you have made an impact and I think that your staff also have to understand that we recognize that the intentions you're talking about are certainly the kind of thing we support.

But you know, it can't just stay that long. I mean, I begin with that, and please know that the fundamental desire for a better world for all people, and especially in Ontario, is something that is our goal as well.

Ms Rosemary Brown: Can I just add, though, that the commission welcomes criticism, because it helps us to see where the spots are that need improvement. It's not going to be accepted with hostility at all.

Mr Cousens: That's good, because it's not an easy job you people have had, and I think that just to go along with that, you know, it's the 80-20 rule; there's going to be that percentage of incidents that you're involved with that really will grab the attention of the media and the politicians and other people, the more difficult-to-solve situations, some of the statistics that require addressing as well, but that shouldn't reflect on all the work by all the people within the commission. I just have to put that on the balance sheet.

There's one thing that came out—and there are going to be others that I touch on this afternoon—and I hadn't thought about it in my own prepared things: The early settlement initiative I find one of the troublesome things. Is that not where you come along and someone will have

established a complaint and then, in order to get a quick settlement, you'll come back from the Human Rights Commission and say, "If you pay \$5,000, we'll drop all the charges"? Is that the one that I'm thinking of?

Ms Rosemary Brown: No, no, no. I'm sorry, Mr Cousens. We would be most distressed if we believed that our human rights officers would behave that way. In fact the early settlement initiative grew out of the desire of both respondents and complainants to have their complaints dealt with, with all deliberate speed.

Mr Cousens: But just on that one, you don't sort of put a pricetag to get a quick settlement on it?

Ms Rosemary Brown: I should probably let—

Mr Cousens: I don't want to go too long on it. Is there sometimes a pricetag on it?

Ms Rosemary Brown: No, no, no. It's a negotiation based, first of all, on an understanding of whether there's a legitimate complaint or not.

Mr Cousens: My only point is, is a pricetag sometimes put on it, that the problem will be solved if there's a certain dollar amount?

Ms Rosemary Brown: No, we do not conduct ourselves that way. This is not the way in which the settlement process works. Really, what we're trying to do is to effect a negotiated agreement, and we do not start out by saying, "Give me \$5,000 and we'll close a deal." That would be very, very bad negotiating technique, and any human rights officer who behaved that way would be very, very severely dealt with.

But I think, in all fairness to you, you really do need an explanation of the early settlement initiative, and I'll tell you why. It's because it's so important to the commission that the members of the Legislature understand clearly what we're doing, because you are our voices, our eyes and our ears in the community. When your constituents come to you, you have to have the information so that you can deal with them in a straightforward way.

Mr Cousens: I'll come back to that one later on this afternoon, because there are some other subjects. But you've helped clear up part of my concern immediately, and I had to just come out at that one.

One of the things that we're concerned with is the number of cases. What we're seeing is that by year-end 1993-94 there were 2,156 outstanding cases, compared to 1,877 outstanding cases in 1992-93. Can you give us an indication of why the number of cases increased?

Ms Rosemary Brown: I'll tell you, first of all, that we're dealing with new cases. We're not dealing with the same cases. There are always more cases coming through the door. There's a continual turnover; 67% of the cases turn over in six months, as I said.

What happens is that when the commission is perceived to be doing its work, and people have respect for it, the case load increases. Also, the economic times put some pressure on the case load. So there is never going to be a time—never—if the commission does its work effectively, when we're not going to be carrying a large case load.

What we have to do is to change our perception of the

case load as being in some way a measure of the ineffectiveness of the commission. It isn't. It actually measures other things. It measures the respect in which the commission is held by people out there.

What measure the effectiveness of the commission is the speed with which we are able to resolve these cases successfully. Don't worry about the fact that last year there were 1,800, and this year there are 2,000, and maybe next year there may be 3,000. What you should look at when you see that is—

Mr Cousens: I'm sorry. I think that—

Ms Rosemary Brown: No, no, no. Just a minute. I just want to finish this, Mr Cousens. What I'm saying is that what we have to then start to look at is the resources that we have to deal with this pressure which the community is putting on the commission.

Mr Cousens: I think that raises quite a serious question, and that is, are we seeing more racial intolerance? Are we seeing certain kinds of issues that are coming up?

Ms Rosemary Brown: Okay. So now we're analysing the cases.

Mr Cousens: When I open it up, it really shows the fundamental problem in society. I think you read something into my question. I'm saying there are more, so are we seeing certain problems? Mr Harnick and I brought in two private members' bills, which we have both withdrawn, that had to do with the propaganda problems we're having and some of the systemic situations where people are perpetrating hate on other people. So we have issues in our society. Are you identifying a growth in some of those issues? That is part and parcel of what the question's all about.

Ms Rosemary Brown: Oh, I'm sorry. I thought you were looking at the numbers.

1140

Mr Cousens: The numbers are part of it. You're not advertising any more for more cases, but there are more cases. So are there certain things you see out of that?

Ms Rosemary Brown: Yes. I can give you the breakdown as to what are the areas that our cases—

Mr Cousens: I guess really, Ms Brown, are there any major trends, just one or two major trends?

Ms Rosemary Brown: Most of our cases still have to do with disability. That still is the number one issue that we deal with, disability, and race. Those are the two big ones. But we're beginning to see more cases around sexual harassment, for example, and more cases around sexual orientation. But most of the cases still deal with disability.

Mr Cousens: On page 5 in our notes it indicates that in 1992-93, 202 cases were referred to boards of inquiry. In 1991-92, there were 73 that went to boards of inquiry, and in the year before it was 28 cases that went to a board. Could you explain why there is such an increase in the number of cases going to boards of inquiry?

Ms Rosemary Brown: The 202?

Mr Cousens: Yes, 202 most recently, down back a few years ago to 28.

Ms Rosemary Brown: Just a second. I'll give you our latest figures, because there has been a dramatic decrease. Part of it has been a different philosophical approach in deciding what cases go to boards of inquiry and which ones don't. I see that in 1993-94 so far we've only had 43 that have gone to boards.

The Chair: Excuse me, Ms Brown. Is that an internal, that yellow-bound—

Mr Scott Campbell: Yes, it is.

The Chair: So it wouldn't be available to the committee.

Mr Campbell: No, that's correct.

Ms Rosemary Brown: There are only 43 that have actually gone to boards of inquiry. We're trying to be more strategic in terms of how we utilize the boards of inquiry.

Mr Cousens: Let's deal with a little bit of history. When you had 202 cases, that was a dramatic increase from 1991-92. What was the rationale for that?

Ms Rosemary Brown: I'm going to turn you over to the historians, because I use history just to move forward. I don't dwell on it myself. Do you want to do that, Scott, or should I give it to Mark?

Mr Campbell: I think there are a couple of issues, Mr Cousens. One is that, as you know, the commission had a task force in that fiscal year, 1992-93, therefore there were more cases going through. We had allocated to the commission, essentially throughout almost that entire fiscal year, an additional 46 personnel to push forward the task force. Therefore, there were more cases just going through the mill and therefore, relatively speaking, there were going to be more boards of inquiry appointed, because there were more cases being processed.

Mr Cousens: There are quite a lot of ramifications through a board of inquiry. You're now moving to a smaller number. What are the guidelines for moving to a board of inquiry?

Ms Rosemary Brown: As Scott said, the task force cases are gone.

Mr Cousens: But when a case is referred to a board of inquiry, what would be the rationale for sending it to a board of inquiry at this point?

Ms Rosemary Brown: Failure to effect a settlement. The early settlement initiative didn't work, for one thing. There is a legitimate complaint which we feel should be decided at that level, rather than dismissed under section 34, because it is a legitimate complaint. The board of inquiry then takes it to its final stage.

Mr Cousens: What's the average length of time for a board of inquiry?

Mr Campbell: Sorry, Mr Cousens. In terms of the previous question, the code under section 36 indicates that it must meet two tests: the evidence warrants and the procedure is appropriate.

Ms Rosemary Brown: I really wish Mark would answer these questions, if it's okay with you, but I can tell that within 30 days after a board is appointed by the minister, it has to have had its first meeting. Mark, if you

want to take over from there in terms of the legal ramifications.

Mr Frawley: First, the chief commissioner is correct. Within 30 days of the appointment by the minister, the board must convene. Typically, that's done by a telephone conference call to set the dates. The length of the actual hearing: In Barrie sometimes it can be a one-day hearing; others have stretched into many, many days. I think the longest on record is a board that spread over some five years of hearing, but typically it's in the range of three to perhaps 10 days.

Then there'll be a period of time, of course, before those days can actually commence, depending on scheduling problems with the counsel involved. Then there's another period of time in which the board has to write the decision. So there are various components that you'd have to add up to get your total answer.

Mr Cousens: I want to follow up because I want to deal with a particular board of inquiry that has been going on for some length of time, not unlike what my colleague Mr Curling did in just sort of letting you know the question.

It has to do with the new investigator who was assigned to mediate the claim of Marty McKay and Patricia Findlay against two neighbourhood variety stores that sell adult magazines. I understand that last October a board of inquiry determined that the commission had not followed its own procedures, conciliation between the two parties prior to appointing a board of inquiry. I guess what I wanted to know is, why could this happen?

Ms Rosemary Brown: Let me start out—

The Chair: Excuse me—

Ms Rosemary Brown: Oh, you have served notice.

The Chair: Yes.

Mr Cousens: I think so, because we've got a very rigid Chair.

The Chair: Yes, a real miserable Chair. Ms Harrington, you're next.

Ms Margaret H. Harrington (Niagara Falls): Thank you for coming, Ms Brown, and all of your staff. Do you have any other members of the commission with you?

Mr Campbell: No. There are no other members of the commission with the chief commissioner.

Ms Harrington: In your opening statement on page 13, you made some very interesting remarks. You said that the subtlety and pervasiveness of racism is only now, at this time, becoming evident. You talked about some special efforts that are being made to root out and expose this, some special procedures and guidelines that you and your staff are using.

What I would like to ask you is, what changes in this particular area have you made? What can we do, as legislators, to help raise this issue? I think it is very important to expose an issue before it can be dealt with. Also, with the public out there in our ridings, how can we encourage them to maybe not take some of the treatment that normally people have become accustomed to taking over years and realize that they are equal and do have equal rights?

Ms Rosemary Brown: I think what I said was that it's not that we're just recognizing it but we've now put it on the public agenda, that in fact we realize we're not looking for the crude expression of racism; you know, the door slammed in your face or someone saying, "Sorry, I don't hire whites." We know that no one does that any more. They've become much more sophisticated, so we have to develop more perceptive ways of recognizing this and the tools to deal with that.

Internally, again, because I believe in starting from the inside out, we have been working through our own anti-racism committee in developing guidelines to help us to better do that. These guidelines, as I indicated in my speech, are going to be ready by the end of this month, and they will be circulated.

But we have been moving very slowly and very carefully and very deliberately, using all of the various reports which have been done for us in the past, really trying to bring ourselves into the 21st century. Because racism is in the 21st century now, and we have been tending to address it the way it used to manifest itself in the 19th century. We haven't kept up with it.

We're trying now to bring ourselves up to snuff. We certainly intend to share that with the schools, with the educational institutions, with community groups and certainly with the public in any way possible.

1150

Ms Harrington: Just to finish off my question, would you have any specific advice at this time or thoughts that you could pass on to us as to how we, as legislators, or others could raise awareness of this subtle type of racism?

Ms Rosemary Brown: I always believe that the very first place to begin is by respecting a person's complaint. The tendency in the past has been to dismiss it and say, "Oh, you're just imagining things," or "You've just got a chip on your shoulder," or "That couldn't possibly happen."

If you begin by treating the complaint with respect and listening to it carefully and with some kind of empathy, maybe that would be a good jumping-off point to start with. It's when a person files a complaint and they realize that they're not being listened to with respect or the person listening to them doesn't even believe them to start with that their frustration then begins to boil and we run into difficulties with them. So I would begin by being very respectful of the person's complaint and the person who is filing it or making it to you, and then examining it and analysing it, again, with respect.

Mr Marchese: Ms Brown, I just want to congratulate you and all of the other members, commissioners and staff, on the work that you have done. Quite clearly, from the initial remarks that you have made, there has been a great deal of work that you've all been engaged in, and I think that helped us in terms of the questions that we're about to formulate to you.

We sometimes, as Mr Cousens mentioned, underestimate what people have to do. We look at statistics as a way of formulating opinions, and at times that does tend not to give a clear picture of what people are actually

engaged in in their daily work. So it's good to be able to have people like you and others comment on what exactly you've done and what change you're engaged in.

I'm going to begin questions on the whole issue of complaints, because Mr Cousens touched on that. We do have the chart that speaks to complaints received by ground and provision, and one of the interesting observations that I make is that only 474 complaints relate to race or colour, out of a total number of 2,317 cases.

What is interesting to me is that the myth or misconception is that the Human Rights Commission deals with race-related issues or visible minorities as they relate to human rights. Quite clearly from the chart, we have 558 cases dealing with people with disabilities, 245 cases dealing with sexual harassment, 392 cases dealing with sex and pregnancy, 156 dealing with age, and so on.

Out of the 2,400 cases, obviously we're dealing only with approximately 20% as they relate to race and colour. I think it's an important statistic to speak to or highlight, because quite clearly the Human Rights Commission deals with many other people of colour and of age and everything else that the categories speak to.

Ms Rosemary Brown: Yes, but I think that in part has to do with the whole history of human rights. When it was first conceived, the focus was on race and creed. Even issues around gender are quite young issues. Certainly issues around disability are very young issues. Sexual orientation is still fighting to become an issue. So it's evolving, but at the base of it were certainly concerns around race and creed, and there is this tendency to think still that this is the only thing that human rights concerns itself with.

As a society, our rights are evolving and they're moving into different areas. I'm sure it's not so long ago, as you and I would remember, that if someone were to say, "I have a right despite the fact that my sexual orientation is different to yours," the response would be: "Of course you don't. Where did you get that idea from? Who ever heard of disabled people demanding the right to have access to public buildings and those kinds of things?" Even around poverty, class rights and those kinds of things, they are evolving.

Part of the difficulty with administering human rights legislation is recognizing these new rights that are coming on to the public agenda and also getting the education out there that, yes, this is not choice any more, this has now become a right, not because the commission says so and not because the legislation says so, but because society has decided that's how it should be.

Mr Marchese: Of course, and you can't control those emerging issues as they relate to society and individuals in that society. I would appreciate a chart that you probably, or a staff person, would have with respect to the numbers as they relate to the categories in the last four or five years. I'm not sure whether you have it now, but in the next day or so if you do have it, I would appreciate having it.

Mr Campbell: Yes, that can be provided.

Ms Rosemary Brown: Yes, we have that.

The Chair: So you would provide it to the clerk and

we will give it to all the committee members.

Mr Campbell: Yes, that's correct.

Mr Marchese: Thank you. One of the things that you have spoken to in your remarks interests me a great deal. The philosophical approach you take to change as coming from the inside out is, I think, an important one. I support it strongly because change should happen that way. Then, of course, how that change happens is a matter of discussion as well.

That is what I want to talk about, because you also talked about adult learning principles, and I think Ms Duignan is the person who connects to this issue. I support adult learning principles because I believe those are the ones we should be using when we're dealing with organizational change. I'm not sure that many organizations are doing that effectively, so what you're doing interests me.

You talk about a learning organization. That interests me as well, because a lot of organizations are not learning organizations; they're very hierarchical and information is passed on, and that's how people learn. That is a mistake, in my view, in terms of adult learning principles.

What I want to ask you is, how are you involving the staff at all levels, including anyone who works in the building, around this organizational change that you have spoken to around many of the issues? We don't need to break them down because the categories are very interesting in themselves, but I'm interested to know, in this inside-out process, from the bottom up, how have people been involved in that change?

Ms Rosemary Brown: I think that probably the most interesting one has to do with the structural changes. Scott would be the best person to describe that procedure to you, and maybe Chris after.

Mr Campbell: I think to take the restructuring issue of the commission first, as an example, but there are many other examples as well, what we chose to do—this goes back to the late spring, early summer of last year—was rather than bring in a consultant from the outside to redesign the organizational structure of the commission, we chose as a senior management team to work together to come up with a variety of options in terms of how the commission should be organized. You see before you in the material that Mr Pond has put together the new organization structure for the commission. What we had was a highly inclusive process where every single individual who was involved in the senior management team at that time was involved in the redesign of the executive ranks of the Ontario Human Rights Commission. So that's point 1.

Staying with the same notion in terms of restructuring, we have just begun, as the chief commissioner said in her opening remarks, to begin the restructuring below the director level. We will do that as each director is appointed. As the chief commissioner said, Mr Neil Edwards has been appointed as director of regional services and systemic investigation. Once he gets his feet on the ground, as we say, he will start working with his staff to do a similar process down throughout his organization.

However, we have established a set of draft process guidelines as to how this should happen. Before we even begin that process, we are going to discuss that with the management excluded personnel on the commission plus the OPSEU personnel in the commission to say: "All right, this is how we think this process should work. What do you think should happen in terms of a restructuring process for the staff of regional services and systemic investigation?"

I guess those are two examples. I can give you many more examples, but those are two. They are grounded fundamentally in adult learning and how organizations change, and that is that organizations change fundamentally when the people within them are involved in that change process. We feel very strongly about that as a philosophical construct in terms of how we are currently managing the commission.

Mr Marchese: Scott, let me ask you this. Every organizational change is obviously very difficult for everyone from the top down. Some people find it difficult to accept different approaches, different ideas, or perhaps even the point that in changing, it means that they've been doing something wrong. So there's at times resistance, at times anger, at times dissatisfaction, morale problems and all of that. What have you encountered in this organizational change that has been difficult that you are dealing with and that you can talk to us about?

Mr Campbell: All of those, I guess, is the answer to that question. I think the way you deal with situations like that is you deal with them first from a process point of view in terms of developing a process and implementing a process that involves people, that is inclusive. If we want to personalize this for a minute, there were at the time we started the restructuring process, at the executive level, seven directors in the Ontario Human Rights Commission. Now, as you know in terms of the evidence before you, there are only going to be four director positions. So people being involved in a process tends to reduce the anxiety level.

Secondly, people being informed about the process: Keep the information coming so that there aren't deep, dark secrets. I think that is also a key element.

Thirdly, I think you have to meet with people. I think you have to meet one on one. Some people have a different concern than others. Some people are angry; other people are sad. Some people are confused; other people are depressed. So you have to keep working with them both on an individual basis and also on a corporate basis.

Mr Marchese: Thank you, Madam Chair.

The Chair: All right, thank you. We will adjourn now and start again with the official opposition at 2 o'clock.

Mr Curling: Is there any way we can try to set up some scheduling after in camera?

The Chair: Well, if you're asking for a meeting of the subcommittee, you can make that request.

Mr Curling: Can we have just a short moment in subcommittee?

The Chair: We don't have a Tory.

The committee recessed from 1203 to 1405.

The Chair: I'd like to call this afternoon session of the standing committee on government agencies to order. We will continue the review of the Ontario Human Rights Commission. In rotation, actually, we were next in order with the official opposition. I wonder, just before we start, Ms Brown, now we have a decent seating arrangement, if you could introduce the people again for the sake of Hansard.

Ms Rosemary Brown: Okay, I'd be very happy to do that. Seated on my immediate left is our new director of systemic investigation, Neil Edwards. On my immediate right is the executive director of the commission, Mr Scott Campbell, and on the right of Mr Campbell is the acting director of policy and public education, Calvin Bernard.

The Chair: Mr Curling, would you like to do 20-minute rotations this afternoon? Okay.

Mr Curling: And if I give up a time within the time—I give up my 10 minutes if I didn't use it or so, is that it?

Mr Cousens: You'll never run short of things to say, Mr Curling.

Mr Curling: Well, with an interesting agency like this, you don't, you see. There's so much you can learn.

I was about to ask you about the process of one putting an application in. I think Mr Cousens had asked it in a different way and I think you had answered that. I said I was going to put you on notice to respond to me on that, so I won't go through that again, because I think somehow you have dealt with it and we don't need to go through that kind of exercise.

One of the things I found in your presentation, Commissioner, is that no mention is made of the Mary Cornish report. The Mary Cornish report itself had put forward some recommendations. I know that the government of the day, the present day too, had sort of hurried Mary Cornish to complete that in a time, which we felt she was doing a good job, but not that I agreed with everything that is there. But some of the recommendations were something of rather great interest.

I'm not quite sure if the minister got around yet to reading it or to assessing it or analysing it, but I know that you had somehow looked at it, and in your restructuring, I just wondered if you had addressed any of those recommendations. Some of them are excellent recommendations. Were they addressed in there and has it been that as you go along redesigning or restructuring, you will take into account the Mary Cornish recommendations?

Ms Rosemary Brown: First of all, in response to your question about the minister, she has in fact indicated that after she has reviewed and made decisions about the report recommendations would be then put forward to the House, and I would imagine that prior to doing that she will sit down with the commission around some of those recommendations. So I'm not sure what the status is at this time of her work on it, but we are anticipating that we will be part of any decisions that come out of her reading of the report.

What we have done, however, is to take some of the

recommendations which were made in the Mary Cornish report which could be implemented without any amendments to the code being necessary—we refer to them as non-legislative options—and a number of these did in fact influence some of the decisions that were made in terms of reorganizing the commission and did in fact show up in some of our organizational improvement initiatives.

Some examples of these would be, for example, the streamlining of investigations, the identifying of closure times for ESIs, and her recommendation that section 34 of the code should be used more rigorously to screen out complaints which are either outside of the commission's jurisdiction or could be better dealt with by some other agency. But as you know, most of her recommendations require legislative changes for implementation and on those of course we will just have to await the government's pleasure.

Mr Curling: You were quite forthcoming with some of the observations of the Human Rights Commission itself. Let me talk about the morale and some of the problems that were happening in there. I think one of the reports that came out of that was the Young report, Donna Young, who had made some of—I never thought it was a report, I always thought it was a letter in itself. But comments were made and a lot of kerfuffle went on about it and people were rather concerned about the things that were happening in the Human Rights Commission. Out of the commission I have seen some policy being developed, like in sexual harassment, but is there any policy being developed about racism, a racism policy?

Ms Rosemary Brown: As I mentioned earlier in my speech, we are working on guidelines for the staff, certainly in terms of dealing with investigation on race-based cases, and as I indicated, those guidelines should be ready by the end of the month. We'll certainly be sharing them with the members, with you as the critic and of course with other members of the committee, if that is your wish.

But what we've also been doing in terms of addressing allegations of racism within the commission itself is that we've established a committee composed of staff from all levels of the organization to review the issue and to advise us on what should be done, and one of our commissioners, actually, Commissioner St Clair Wharton, sits on that committee. The committee developed a report after consulting with the staff throughout the organization, and this report was actually tabled with the chief commissioner and the executive director. It was then passed on by us to senior management who have been reviewing it and its recommendations.

I have to confess that we've probably not moved as quickly in terms of dealing with this report as we should have, but there's been a real reason for this, and I think I touched on that earlier when I said that in an issue of this nature, we want to move very carefully and properly, and so we don't see it as something that can be rushed. But what we are determined to do is to integrate our anti-racism strategy into all of the organizational change which is taking place in the commission, whether it's in improved customer services, in organizational restructuring,

ing, in training—everything that we do. We don't see it as being an add-on. It's not something that you do "as well" or even "in lieu of." We see it as being an integral part of everything that we do in the commission, and that is one of the reasons why we are taking our time and moving very, very carefully in this direction.

Mr Curling: I was concerned that most of it was slow-coming because, as you mentioned in your opening remarks, when the Human Rights Commission was established, basically it was on race and on colour and creed, and sexual harassment was rather new to bring this forward, but which was long overdue to address that issue. I always found it was slow-coming in the fact of having a policy on racism inside the Human Rights Commission, but what I'm hearing, too, is that of course you want to get it right and want to move it properly.

Ms Rosemary Brown: Yes.

Mr Curling: When do you see this coming about, that we would say, "Here we are, a little glossy book of policies here"? When do you see this happening?

Ms Rosemary Brown: The guidelines are going to be ready by the end of the month. That's not a problem. The problem about developing our own anti-racism plan of action, again, because it is an integral part of the organization and the culture of the organization, that's going to take more time and actually I just don't see it as being something that we're going to be able to race through.

We really want to examine ourselves. We want to be sure that not just our practices but our policies actually are in line, that we're not just a model in terms of what we say but in terms of what we do. We want to go beyond tokenism in terms of our practices inside, whether it is in employment or promotion and those kinds of things. We're genuinely trying to make equality a reality, and this is not easy. This is not something that's going to happen very quickly.

One of the reasons we have so much sympathy with complaints involving both complainants and respondents is because we realize that if you really are serious about this job, about anti-racism and you really want to make it work, that you have to be deliberate in your approach. You have to take the time to do it properly, and it has to be integrated, not only what you do but in how you think and how you speak and in every aspect of what you do.

Any additional effort this might entail we think is worth it in light of the tremendous benefits which will accrue to us, as an organization, of becoming a genuine anti-racist organization, and indeed for other organizations in the public and private sector that look to us for leadership and guidance in this area.

Mr Curling: Yes. I appreciate the fact that if you want to do it, you might as well do it right at the beginning, or as near as possible, to get it right and have an effective policy, but I just feel it is really long in coming in an agency that's supposed to be dealing with that and not having a policy in place before. But I want to leave that a little bit.

Ms Rosemary Brown: In closing this off, though, I want to disabuse you of the idea that we're talking about

the future. Because we are practising or trying to practise what we preach, that makes us more careful in terms of how we articulate our policy, but I would like to think that as an organization we are really doing everything we can to be as anti-racist as we can in our practices.

Mr Curling: But that's the problem. They weren't practising what they preached. There was evidence of racism within the Human Rights Commission.

Ms Rosemary Brown: Right. We are addressing that really seriously, and the first step in addressing that was to stop denying. You won't hear anyone denying that any more. We've said, "Okay, it's here, we've looked and we have to address this."

Mr Curling: Let me go back to the Cornish report a bit. The Cornish report also criticized the lack of independence of the commission.

Ms Rosemary Brown: It also criticized what?

Mr Curling: The lack of independence of the commission. Does the commission view this as a problem? What about the allegation that the commission has not dealt really strenuously with the claims filed against the government? They feel they weren't as active. These are accusations that were made that they don't feel it was active enough.

Ms Rosemary Brown: As I said earlier today, my experience of the commission is that it's operating independently and at arm's length. We do have to do business with the ministry. The executive director has to report on administrative and financial matters to the ministry. Those things have to happen.

I do keep the minister, in the same way as I keep you as the critic in opposition and Mr Cousens as the critic in opposition, up to date on the things that we are trying to do, because we see this as our route through to the people of Ontario. But our experience has not been that our independence has been breached in any way.

Mr Curling: You don't really see that the present association or the present arrangement through the ministry, not having that, and then that having the commission reporting to the Legislative Assembly would be more effective—you don't see that there would be a difference or you don't think that it could be more effective that way? Not that I'm saying that the minister interferes in any way, because of course if she does, we would be in the House calling her to that task.

Ms Rosemary Brown: Right.

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Mr Curling: But I'm asking, though, would you see that the commission reporting to a Legislative Assembly committee could be more effective and be perceived to be more effective if it does so?

Ms Rosemary Brown: I think that is a debate that our elected members need to have and also a discussion that the commissioners at some point need to have. It's not really something that we have exercised ourselves over at this point but it's certainly a debate that I think the elected members need to have.

Mr Curling: There are people you had mentioned when you were speaking about the—I even hate to use

the word "backlog" now because I think you have—

Ms Rosemary Brown: It's case load.

Mr Curling: The case load. Some of the case load that more or less people have found themselves in—in other words, those who put in their complaints to the commission get rather frustrated and withdraw their cases. I have a gentleman in mind who had written to me and had withdrawn his complaint against the ODI; this was on a disability issue. He was so frustrated with the time frame that was given to deal with his case that he couldn't be bothered to go through that and gave up on this process. Are you having many people withdrawing when they put their case forward? Because I, as a member of Parliament, receive quite a lot, and I can say to you too, when I do call the Human Rights Commission, I do get assistance and support, so I'm more eager to give empathy towards the staff.

I'm going to ask two questions in this. Do you find that a lot of people are withdrawing because they can't be bothered to wait this long or feel they're not being attended to; although you're saying that you're going to have people reporting back a couple of months afterwards, they withdraw their case and they can't be bothered because of the time frame?

Ms Rosemary Brown: According to our statistics, in terms of formal complaints, the withdrawal rate is about 10%, but I don't think you should conclude that everyone who withdraws is as a result of frustration. In fact, in some instances it is that there's been resolution and people have decided that it's no longer necessary to proceed any further.

Certainly our experience with ESI is that again sometimes the two parties just sitting down and talking to each other resolve it, and so they say, "Okay, there is no need to go any further." A new process before going to the board of inquiry is pre-conferencing. At that stage 70%, I think is the figure, of the people involved with that talk it out, come to a resolution and decide not to proceed any further.

But it is important to us at the commission that you know and have a clear understanding of time lines, so that when your constituents speak to you about time lines you are better able to assess whether they're accurate in terms of their perception. So I'm going to ask Neil to go over again, in terms of walking through a complaint, the time lines which we have now established.

Mr Neil Edwards: In terms of the ESI, which is the first step in the process, we're now required to complete an ESI in 90 days. If we cannot obtain a resolution within 90 days, it then becomes a formal complaint.

Mr Curling: ESI is what?

Mr Edwards: Early settlement initiative. Where there is no formal complaint, the parties agree they want to resolve it and they do that. Of course, clearly we do not coerce parties into attempting to resolve the complaint. They understand what the process is and they decide whether or not they want to go along with the process. So it's an agreement between the parties in terms of coming to a resolution. As I said, if it's not, it then goes into the formal process and that could take anywhere from I

would say six months to up to two years to be resolved.

Mr Curling: It was rather interesting. I looked into the annual report, 1991-92, and you had a case on the system, in case resolution, and it was in connection with the Attorney General's office and the Ministry of Government Services. I think it was in regard to access for those who are disabled. It was reported at that time that the case had been discussed. It seems to me it had taken a considerable length of time. I'm going to guess: It looked like it took about two years, because the briefing notes that I got from the research office were saying that the matter has now been resolved.

One would believe that a government that wants to set an example would have come very easily to a resolution for this. Did you find this painstaking? Did it take an unusual length of time? Was there some sort of reason you feel that there should be more cooperation? Because a matter like that, talked of among brothers and sisters, I thought would be easy to resolve.

Ms Rosemary Brown: Systemic cases take a little bit longer, but then, again, that's Neil's area of responsibility. But systemic cases, because they deal with the whole group rather than just individuals, of necessity are more problematic.

Mr Cousens: Proceeding with the point that I had touched on before we moved to the other parties, it has to do with the Marty McKay and Patricia Findlay situation in which a board of inquiry determined that the commission had not followed its own procedures, and that is to require a conciliation between the two parties prior to appointing a board of inquiry. Could you explain how this could happen?

Ms Rosemary Brown: Yes, we take full responsibility for that error, the commissioners as well as the staff. We blew it on that one. What we have done is learned that lesson the hard way and put into place systems to ensure that it won't happen again. Everyone has now been made fully aware of the legal requirements for this step to be taken before any board can be recommended. I said the commissioners as well as the staff take responsibility for missing on that one, because it actually comes before the commission before it goes before a board of inquiry. We should have asked the question and we didn't. So we blew it as well.

This awareness has come about by a combination of directives and training directed at both front-line investigatory staff and at ourselves as commissioners. We certainly link this to some of the accountability and organizational changes that are taking place. We take full responsibility for that.

Mr Cousens: How much has the commission spent on this case to date and how much more do you anticipate that this case will cost in the future?

Ms Rosemary Brown: We've spent \$60,000 to date, as of December 31, 1993. In terms of any other information about the status of the case, again I want to turn you over to Neil, who is responsible for case load management.

Mr Cousens: Just mainly on the question of cost, what do you expect this to cost? I mean, you've got to

have a sense of the time that's going to be involved.

Ms Rosemary Brown: No, because we have no idea at this point as to whether the case will actually go back to board or not.

Mr Cousens: Why has this case, which was filed in 1985, proceeded for nine years, when the variety stores have complied with municipal bylaws regarding the display of adult magazines and the material is not considered obscene under federal law? Why has the claim not been dismissed?

Ms Rosemary Brown: Because it is possible that this case will return to board, because it is now back with the commission and in its investigatory stages, it would be really inappropriate for me to be dealing with any detailed responses to your question.

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In the broad, generic sense, though, the issue at stake here is not the legitimacy of selling magazines; the issue at stake is a poisoned environment which contravenes the code. But other than that, I really can't get into any other detail.

Mr Cousens: Since the case has been outstanding since 1985, would you not agree that it is highly unlikely that conciliation between the parties will be successful?

Ms Rosemary Brown: We're certainly not going to make any such assumption now. We're going to try to follow the direction of the code, which is that we have to try for a settlement.

Mr Cousens: I'll just make a comment that this is, to me, one example of where I believe the commission has gone into an area, spent \$60,000 at least, plus more, plus time, plus energy, which I say, at the very minimum, through screening, the grey nature of the situation, I personally question the extent of the involvement of the commission in it, the length of time it's taken and the cloudiness of the jurisdiction. But I can see that you're not able to discuss it further because of the situation which you explained, and I accept that. But I just want to go on record that I take strong exception to the way the commission has spent time and money and effort on that particular issue, when in fact it's been handled by other areas.

I move to another question. In 1991 Catherine Frazee, the former chief commissioner, launched a new case management system to deal with the backlog of outstanding cases at the commission. The minister allocated \$6.4 million over a three-year period and 58 new positions were added to the commission. Yet today we still have a backlog of 2,156 cases. In your estimation, was Ms Frazee's case management plan successful, and if so, why are there still 2,156 outstanding cases?

Ms Rosemary Brown: I think I'll start out by clarifying that the 2,168 cases that I think you said we're talking about is our case load. Some of those cases may have actually walked through the door on December 30. These are not necessarily cases which have been with us since 1985 or whatever. In fact, there are only 250 cases in our case load that have been with us for more than three years. All of the cases that were in the task force at the time when that money was released to Catherine

Frazee are going to be closed, finished, done with, by March 31 of this year. There are only 202 of those cases left to be closed, and they're going to be closed by March 31 of this year.

Mr Cousens: Do you think that case management that was introduced at that time plan was successful?

Ms Rosemary Brown: I think the case management plan was certainly a step in the right direction. In fact, we have built on that and we are improving that. I notice that Scott wanted to add something to it. But certainly, as I said, nothing is perfect, and we are building on it and improving it.

Mr Campbell: I think that in terms of the case management plan it was good as far as it went, but what we have done in the last year is develop a whole set of organizational improvement initiatives that are not just related to case management. The chief commissioner talked this morning about restructuring the organization, about technology, about training people etc.

So we have not just dealt with case load and case management. We've dealt with it in a much more fundamental way in terms of, in a sense, re-engineering our workplace. We think that is a much better way to go in terms of dealing with the case load that's before us.

Mr Cousens: I accept what you've just said. I think, in the spirit of trying to find progress, that you're doing things better. In 1991, when Ms Frazee made the investment and it was announced in the Legislature, I criticized it then and I criticize it now. I thought it was not the most wise way of addressing some of the backlog and the concerns that people had with the commission. Inasmuch as your comments now lead us to believe that you're trying to find other ways—the point we were making and continue to make is that you don't necessarily always solve problems by throwing money at it. You've opened up educational programs and you've got quality control programs and other things. It all has to be a concerted, wholly rounded, complete effort that does it. Money isn't necessarily the solution to it.

Certainly when we saw that as the panacea—well, it wasn't painted as a panacea, but it was certainly pointed out that it was going to solve a lot of things—we were satisfied then that it wouldn't work and are still satisfied.

Would the chief commissioner explain why, as the Ombudsman pointed out in a July 1993 report, that despite hiring 33 additional staff “the case load stood at 1,877 on March 31, 1993, 574 above its target of 1,303 for that date”? The Ombudsman pointed out in her July 1993 report that despite hiring 33 additional staff, the case load stood 574 above the target that was to be set for that date.

Ms Rosemary Brown: First of all, when that report came down, we pointed out that there were some errors in her calculation, that those figures are in fact not correct. But it comes right back to the initial statement that we made, that the history of the commission is that there have been real problems in dealing with case loads. We have tried to dissect this, to look at it under a microscope to find out what it is that's not working here and how we can work it better.

We now know, for example, that on average we can expect one of our officers to deal with approximately 28 cases in a year. We know that. So when you divide 28 into, I don't know, 2,000 cases or whatever, it's easy for us to tell whether we're going to be able to make our target or not, based on the number of officers we have, if they are working full-time.

So even though I agree with you when you say that you can't throw money at the commission in terms of solving some of our problems, I don't want you to go away thinking that money isn't going to help, because money is going to be a great help to us, and we are certainly hoping that this committee is going to be very supportive in terms of helping us get budget increases if that is possible.

I've met with the Ombudsman. We've talked about it, and I think that having shared with her, as I did with you and with Mr Curling, the organizational changes around dealing with case loads and other things in the commission, she also is doing what we're doing and monitoring very carefully to see whether we're going to get some positive results from this or not.

Mr Cousens: I think my conclusion is that you have to continue to ensure that there is an improvement in output. It has to happen and we have to find ways.

Ms Rosemary Brown: Absolutely.

Mr Cousens: I see you're spending money on technology, you're spending money on people.

Ms Rosemary Brown: Training.

Mr Cousens: Training. You're putting a personal effort into it; your senior staff are. I can just tell you that the emphasis has to make sure that you succeed in getting that productivity up. We're all looking at you very, very carefully, and that also adds pressure, which makes it maybe even more difficult to perform, but I can assure you that our interest is sincere.

Ms Rosemary Brown: Can I just say that I agree with you 100%. We know that we have to improve our productivity, and this has been really the main thrust of the changes that we're bringing about, because I believe that, like justice, human rights deferred are not human rights protected. So we certainly agree with you.

Mr Cousens: I know you would, and I think that you just have to understand the urgency in pursuing that.

Ms Rosemary Brown: Absolutely.

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Mr Cousens: I submitted an order paper question, and your staff indicated that the average length of time that it took to resolve a complaint, from intake to final settlement, was 637 days in 1990, 740 days in 1991, 692 days in 1992, and 661 days in 1993. Why has the amount of time needed to resolve a formal complaint not decreased more substantially in light of all the additional resources and personnel specifically targeted to improve case management?

Ms Rosemary Brown: This is where we're really going to have to ask you to be patient, because I am convinced, and we all at the commission are convinced, that once these changes that we're making inside the

commission, the eight changes that I mentioned in my opening remarks and that we've been talking about this morning, are on stream and functioning, you will begin to see an improvement in those figures. But it is not going to happen overnight. It is really going to take time.

But when the change comes, it's going to be endemic. It's going to be rooted change, and I think that's the best kind of change, I'm sure you will agree, to go for. We've tried the cosmetic stuff. It's been tried, and it just doesn't work. There's a limit to what powder and lipstick can do, really.

Mr Cousens: Do you have an average cost for cases that reach each of the following stages? Do you have a costing of what it is? I can outline the stages. Do you have it worked out what the costs are at different stages?

Ms Rosemary Brown: No. Would you like us to do that for you? I'm not quite sure if we could.

Mr Cousens: I wouldn't want it to consume all your energies when there are other important things to do.

Ms Rosemary Brown: Well, there you go.

Mr Curling: The backlog again.

Mr Cousens: I don't want to be the excuse why the backlog gets bigger. There's got to be care. But, to me, it would be one of those things I would have thought that your management would have addressed in seeing what you could do on it. I won't pursue that question.

Ms Rosemary Brown: I think we can do it. There are some people, like Mark, who like to play on the computer and come up with facts and figures like that.

Mr Cousens: I know you're proud of that Mark.

Ms Rosemary Brown: So we might be able to come up with those figures.

Mr Cousens: I think he's got more security than some of the rest of us have around here.

Mr Curling: Speak for yourself.

Mr Cousens: I don't have much, I'll tell you. I live in Markham. They're after one politician.

Mr Marchese: There are 70,000 people on your hiring committee, is that it?

Mr Cousens: I just keep my head down.

The one thing that I want to come back to, and I was talking over lunch with a couple of people who agreed with me, is that there is a concern that in your early resolution approach to solving situations, in fact corporations are almost held to ransom. Your answer earlier was the answer I wanted to hear, so therefore in my challenging your answer, please don't see it as a challenging of yourself.

I do know of instances where, in order to get the problem out of the way, dealt with early, what has happened is that businesses have been offered a chance to pay up and then have the thing shoved aside. What they've done is to say, "It's almost easier to pay \$4,000 or \$5,000," and that's the number I've heard several times from different people who have been involved with people in your commission, rather than pay the cost of the lawyers and their time and their staff and the energies to go through the whole process. For them, it's an easier

out than the battle that could go on and on, and then when it's finished and done, they might not have won anyway. They can say: "It could cost us \$15,000 to fight it out with the Human Rights Commission. We might just as well take a hit for the \$5,000 and then let it go."

In that way, what you've done is you have been able to have an early settlement, but whether you couched it in the right terms or not, you in fact left the person who was being charged or challenged or brought to the issue very angry at the way the system works today.

Ms Rosemary Brown: That's a really serious charge and I'm actually quite disturbed by it because we have a legislative mandate to endeavour to effect a settlement in every case, but our investigators cannot take sides. They cannot either coerce one party or the other into settling a complaint. They have to remain neutral throughout this entire process. They cannot force a complainant to accept an offer made by a respondent or vice versa. They cannot coerce. They're not supposed to. They must not.

Mr Cousens: But, Ms Brown, and agreeing with you there, there's still a way in which that when it is tabled, "Okay, this can go away if you have this." How do you not cause that doubt to be created that they're being held up for ransom?

Ms Rosemary Brown: Because one of the things that the investigator should and must make absolutely clear at the beginning and throughout this process is that at any time either party, respondent or complainant, has the right to go to a formal case, that they don't have to settle in—

Mr Cousens: But you see, that in itself becomes such a threat because of the cost and time and the very issues why they say: "Well, look. It's easier to buy out of this process by paying up this amount of money."

Ms Rosemary Brown: The investigator must not and cannot say that. If you as a complainant or you as a—

Mr Cousens: I don't think anyone would have said it just as I did.

Ms Rosemary Brown: Okay.

Mr Cousens: But I think the intent would be much the same by virtue of the holdup, "On the one hand I can end it with a cheque and on the other I go through the process," and the confidence that the process is going to take time, it's going to take money, it's going to take lawyers and it's going to take all the other things out of running their business and getting on with things, so therefore it's just a balancing act so, "It's easier to go and pay this amount."

Ms Rosemary Brown: I know, but I think it's—

The Chair: It's going to take your next turn to carry on this particular part of your debate.

Mr Cousens: Oh, what a ruthless—

Ms Rosemary Brown: If I can serve notice that maybe Mr Cousens should rethink whether "coercion" is the correct word here.

Mr Cousens: It's hard to know the exact words. It's the effect—

The Chair: We now move to Ms Carter.

Ms Jenny Carter (Peterborough): I'd like to say that I certainly agree with your emphasis on the inside-out

approach and I think this is what is bearing fruit and that you have achieved and are achieving a great deal.

We were just talking about productivity and how much each member of staff can achieve. In the notes that we were given we have a table of the number of employees; it's on page 12. What is remarkable is just how stable that picture seems to have been. The commission seems to have gone down from 11 through 13 to nine; office staff, 48 right the way through.

Part-time office staff, seven all the way across; full-time professional support staff, 131 to 130—that's all the variation there—and part-time professional support staff, three, three, four, four. I presume the extra task force was not included in that in any way; otherwise there would have been a bulge, so that's the regular staff.

If I compare that with table 1 on page 4 where it shows us the inquiries from the public going from 60,000-plus in 1988-89 to 116,000, and the cases closed going from 1,345 in 1988-89 to 2,659 in 1992-93, it looks to me as though as there is already a great deal more productivity in there. I'm just wondering if you could comment on that.

Ms Rosemary Brown: I think maybe you should also factor in table 8 on page 12, that the expenditure in terms of the budget we've had to work with hasn't changed either. So we have been dealing with a larger case load pretty much with the same number of people and the same amount of money, almost.

Ms Carter: Are they in most cases actually the same people or have you had a lot of turnover within that?

Ms Rosemary Brown: Not necessarily, no. I would say it's a pretty stable environment, yes.

Ms Carter: So the difference presumably has come from all those things you listed that you've done, including particularly training and development—

Ms Rosemary Brown: Mostly, yes.

Ms Carter: —and I suppose better technology and so on.

Ms Rosemary Brown: Yes, it's beginning to happen. There will come a point at some time, of course, where we'll hit the wall and we won't be able to keep up with the pressure.

Ms Carter: That's what I was wondering, what your projection for the future is. We did touch earlier on how different kinds of discrimination are traditionally hidden. They're just part of life and people don't notice them or do anything about them and then we kind of unearth them and say, "Hey, this isn't fair; women aren't being treated equally; people of different colour aren't being treated equally," and so on. Then when they've come into the light of day, as it were, the complaints start.

Hopefully as this process that we're getting into here continues, we should achieve some sort of success, and I guess you're not working completely in isolation because the employment equity is coming on stream. We've got the Advocacy Act, which will help people get their problems looked into before they go too far, that kind of thing.

Do you see this whole thing just escalating or do you see it reaching some kind of equilibrium or even diminishing or do we have new kinds of discrimination that we haven't even unearthed yet?

Ms Rosemary Brown: Oh, good grief. I'm hoping there are no new kinds of discrimination that we haven't unearthed yet. I'm hoping we're becoming a more enlightened society rather than the other way around.

Interjection: We've got more subtle discrimination.

Ms Rosemary Brown: Yes, more subtle forms of discrimination, so our techniques have to be improved.

One of the commitments that we've made as a commission, since you raise this around productivity, is that we recognize and appreciate the fiscal restraints that the government is operating under and we're going to do the absolute best that we can with the resources we have, but we recognize that there may come a time when the resources are just not going to be sufficient to make us improve our productivity in any way, that in fact—

Ms Carter: Obviously productivity can't improve indefinitely, although I sometimes think business thinks it can.

Ms Rosemary Brown: Yes. At which point then a decision has to be made. The community has to decide that it is willing to accept less because there is less to work with or else there has to be some way found to improve the resources.

Ms Carter: But does not the more systemic approach that we have with, say, employment equity mean that hopefully there will be fewer individual complaints as that gets under way?

Ms Rosemary Brown: We're certainly hoping that in the employment field employment equity will deal with a lot of the systemic complaints, but there are other systemic complaints that are not—

Ms Carter: They aren't all employment equity.

Ms Rosemary Brown: —that haven't got to do with employment that we still have to deal with.

Ms Carter: Okay. Now what about the role of the Human Rights Commission with respect to the other equity commissions? I think the Cornish report did suggest that they be more or less amalgamated and I do understand that there is an evolution going on whereby you're sharing resources; you're becoming closer together. Is that correct?

Ms Rosemary Brown: We certainly cooperate. You're speaking of other groups like the anti-racism and pay equity and other commissions. We're very supportive of each other's work and whenever it's possible we do share resources, but until employment equity's actually on stream and we've worked out a protocol for relating to each other, all we can say is that we are cooperative and we want to work with each other but we're not sure how that's going to happen.

Ms Carter: Yes. So there is a process of evolution going on there. Just one last point. I did hear the question raised as to whether there were any business representatives on the commission.

Ms Rosemary Brown: Yes. The commission actually

is very reflective of the community in which we live. There are nine commissioners. Robert Milbourne, who certainly would consider himself to be a representative of the business community and is one of the top executives with a large corporation, sits on our committee. I gather his corporation has a workforce of 7,000 people. He's actually with Stelco in Hamilton. Certainly he brings that perspective to bear on the commission and it is very respected and very useful.

Ms Carter: So you don't see any obvious gaps in your representation.

Ms Rosemary Brown: Well, we certainly need, I would imagine, more commissioners who are bilingual. Because we sit as three-member panels in deciding some issues, sometimes it's not possible unless we have at least three commissioners who speak and understand French fluently. We've also been trying to encourage the first nations community to suggest someone to sit on the commission. Other than that, it seems to be pretty reflective of the diversity of the community.

Ms Harrington: I'd like to take a few minutes to look at a little bigger picture. I believe the quality of your organization is very important to the fabric and quality of life in Ontario. I don't have a background to know a lot about your organization, but just from what we've read so far, it seems to be a key part of making sure we have the quality of life here that we want.

I think what we're involved in—I believe most of us who were elected and your organization as well—is trying to change attitudes. You talked about rights evolving. It's not the commission that does this and it's not the Legislature that does this, but it's actually society that does this.

I was looking through your booklet that you gave out here. It talks about how to deal with different situations and it talks about sexual harassment here, being able to say things like, "That's not appropriate," or "That's not funny." Would you see part of your commission's role is to encourage people to speak up and speak out, whether it's just a joke or a pin-up or the rest of these things that so often people don't say anything? It's much easier to be quiet than to say, "I don't like that."

Ms Rosemary Brown: One of the things we're really pleased we are able to do is to prepare material which people can use to speak up and to speak out, and to prepare such material not just in English but in any language that they request. For people who are sight-impaired, we also have audio tapes. I know there's material here which I can make available for you later.

We see the public educational component of the work that we do as being very important in terms of having materials people can actually have that they can use in terms of their own empowerment in these kinds of—

Ms Harrington: I'd like to take that a step further. There are many things I'm sure that are underlying causes of discrimination, that enable discrimination to take place more easily. Two things that come to mind are the issues of pornography and non-gender-neutral language. How would you see your commission aiding the province in changing these types of underlying causes?

Ms Rosemary Brown: In terms of gender-neutral language?

Ms Harrington: Or pornography.

Ms Rosemary Brown: One of the things we've done in the new department that Calvin is acting director of is streamline the structure so that we amalgamate public policy and public education. Those are the kinds of issues that, when they're dealt with as public policy then we can prepare the tools and take the message out in terms of public education.

The commission—and I guess I have to be careful how I say this now, but I said it earlier—we are not making public policy. I firmly believe that public policy is made out there and those people who are supportive of the public policy of the day get elected by the electorate and then they make the legislation which directs the work that we do. But we don't make it.

You raised two very contentious issues which the community is still grappling with. At the point at which the community resolves that, then I can see us being in a position to prepare all of the material and to get all of the stuff out.

1500

Ms Harrington: I see the commission, though, as part of a much broader structure, of—

Ms Rosemary Brown: Raising the issue. Sure.

Ms Harrington: —raising the issue as part of this, because what you do is get it into the press, then there's the press and it gets people talking about it in their workplace, in their home environment, in the schools. Then of course it gets into the movies and everything else. People do change attitudes. When you think of smoking and drinking and driving, within a decade or so, people are much more aware of things they weren't before.

Ms Rosemary Brown: Yes, and as Scott just pointed out to me, the sexual harassment, I think, is a very good example of the way in which this issue was raised first in the women's community, became a public issue, then when the commission had to deal with it the board of inquiry, through some of its decisions which it brought down, actually enshrined it.

Ms Harrington: So you are a key to bringing things forward and having it dealt with visibly.

Ms Rosemary Brown: Right. Yes.

Ms Harrington: In the research paper that we were given, there is a quote from the Donna Young report, and I found it interesting. It said, "The author alleges that there is a general lack of understanding that the law sustains racial discrimination through its basic premises and interpretive framework." If that is the case, that in fact the law sustains, in some cases, an ability for racial discrimination to take place, then obviously it falls on us as lawmakers to deal with that.

Ms Rosemary Brown: I think actually an example that would probably be easier to understand at this time would be the same-sex issue around spousal benefits where even though the charter says one thing, the code says another thing and we're waiting for the legislators to

clear it up for us.

Ms Harrington: So we do have a definite role—

Ms Rosemary Brown: Oh, absolutely, a very important role.

Mr Paul Klopp (Huron): This is maybe something to do with what Mr Cousens sparked—maybe I'm on a different subject altogether—but the issue is process. I think everybody I've talked to in the industry and whatever says, "Of course I want human rights and I want to treat my workers fairly," and believe me, that's where I have no trouble standing. But then, of course, you go through a process and then it frustrates and the red tape gets people argumentative and frustrated. Of course, when it comes to human rights, it's such an easy target for everybody to quickly have motives.

I'm going to run this process through you very quickly: An employee who felt he or she was done unduly wrong by a person goes to the commission. The commission goes and investigates. This is the way I understand it: The commission then puts a dollar value on it, if the worker got laid off or lost her job or whatever.

Ms Rosemary Brown: No.

Mr Klopp: I'm just going to run this through and then you can show me what's wrong with it, and that's fine.

Ms Rosemary Brown: Okay.

Mr Klopp: The employer sees the dollar figure; mentally, it goes in their mind, "Do I pay the bill, even though I swear I'm—?" Because they usually phone me, they're swearing that they've been wronged. You're not hearing both sides—or not even hearing any side—but they say in their mind: "Well, do I pay the bill or do I go on and fight it? I need a lawyer and it's going to take time." So they pay the bill.

That's the kind of scenario I've seen. No one coerced anybody; it's just that this is the employer phoning me. They agree when I say to them, "Are you treating people right?" "Oh, yeah," all that good stuff, but that's what they tell me.

Could you repudiate that there's a process here that I've been missing or that this owner's been missing—or owners, because I met a couple?

Ms Rosemary Brown: If it's a straight employment issue where someone has applied for a promotion or someone has been released from employment for some reason and they have said, "I was laid off because of my race," or disability or whatever, usually what the complainant wants is their job back. That's usually what they want. The highest percentage of times, they want their job back.

Then the negotiation begins: "No, you can't have your job back." "Yes, but this means to me a loss of employment, it means a loss of wage, it means a loss of benefit." But throughout the entire process the investigator is neutral. The investigator at no time can take sides either with the respondent or vice versa.

Mr Klopp: Totally agreed. But how do you stop that mental thing where they see \$3,000 will fix the problem or I have to have a lawyer? I guess one of the questions

is maybe why they need to have a lawyer to go to fight a case if they truly believe they have a problem. Why do I need to hire a lawyer to go to a case in front of a commission? If I'm an owner, surely I must be fairly intelligent enough—he or she. If I've got that far I can go in front of the commission, because my time is only my time if I want to fight the case. I just throw that out to you.

Ms Rosemary Brown: And there is absolutely nothing in the legislation that would suggest to them that they have to hire a lawyer. That is a decision that they've made: "Hey, maybe I'd better hire a lawyer. This looks as though it's getting serious."

But if you wanted to use a specific example, one of the five cases I mentioned might be a good example, and that's the age case. I could ask Neil again, who is responsible for case load management, if you wanted to talk about that case where this person was forced into early retirement and filed a complaint and said, "I was forced into retirement because of my age." Do you want to deal with that?

Mr Edwards: I need some clarification, Mr Klopp, as to what exactly your question is regarding the process.

Mr Klopp: The process seems to be that, no, nobody is accusing anybody of forcing someone to make a mental deal, "I'll make the payment and then this will be off my back." When they phone their member of Parliament, they're saying, "The dang process is no good." Then they start flagging that they don't like the Human Rights Commission.

It gets into that, and that isn't what they're arguing about. They're just having this feeling that's got out there in the community, and maybe you can take this back and help turn that feeling around, that you don't need to have a lawyer to go and fight a case if you have an employee who brings something up to the commission. Because that is a feeling that comes right off the bat, "I need to hire my most expensive lawyer." This is an employer of four people in this particular case. He—it happened to be a he—has to go and hire a lawyer.

Well, right off the bat, I know what lawyers charge even out in good old Huron county, and \$3,000 isn't going to go very far. So they feel they'll just pay it off, even though they swear on a stack of bibles that, "That person was wrong. I deserved to fire him. I'm not a bad employer," and all these other things they start dragging into it.

Maybe there's some way that we can get back to the employers that you don't need to hire the highest-priced lawyer in Ontario to go and argue a case at the commission. I'm just throwing that out to you. The process is fair but somehow or other it's getting out there that "I need to hire the best lawyer in the world." That's unfortunate, because it's getting the issue confused.

Ms Rosemary Brown: Yes, because in fact after the investigative process is over, there's disclosure. They can see what the investigator has come up with, and if in fact they're willing to negotiate in terms of giving a person their job back, then that closes it. If they're not, then that is the point at which they probably feel, "In this litigious

day and age, maybe I have to go and hire myself a lawyer." But the commission has no option. Under the code we have to try to effect a settlement.

Mr Curling: Employment equity legislation is supposed to have been in place, but it's a false hope that the government has driven into the people because the regulation has not yet been completed and therefore we have no legislation really. It's not been proclaimed. I presume that—

Mr Perruzza: Are you happy or sad about that?

Mr Curling: Our bright light came back again.

I presume that this more or less adds a bit of strain on the commission from this respect, Commissioner, that people felt that this would be dealt with, and when this was brought into place, the Employment Equity Commission, that cases like those would be looked after through there. Instead it's not there.

Do you find that there's a bit of a strain on the commission right now of expectations, false hopes are there, and employment equity is not in effect and people are still coming to you to resolve employment equity cases that are in regard to systemic discrimination?

1510

Ms Rosemary Brown: Nothing's changed. If someone walks through the door or makes a phone call and files a complaint around an employment issue, it's dealt with. Nothing has changed.

Mr Curling: You'll be dealing with systemic discrimination now until the government gets its act together and puts the regulations through. In other words, right now, if someone come in with systemic discrimination in regard to employment equity, would you be dealing with that?

Ms Rosemary Brown: They would be treated no differently than anyone else who comes through the door and files a complaint.

Mr Curling: If the Employment Equity Commission was now in place, you would then transfer that over to the Employment Equity Commissioner?

Ms Rosemary Brown: It's hard to deal with hypothetical stuff. As a matter of fact, one of the only things I've probably learned in my 14 years in politics was not to deal with hypothetical stuff. I'm going to wait until the commission is in place, until we've worked out protocol about how we relate to each other, and I'm going to answer that question at that time. How is that?

Mr Curling: I didn't think that was hypothetical really. I thought that the anxiety and the urgency of employment equity was there that they touted around so much; I felt that if it had been in place people would be knocking at the door because they've been discriminated in that sense. Again, maybe a year after this, we will see how many cases go to the Employment Equity Commission and how many cases actually, within the time of now and then, when the government gets its act together, have been held up through that process.

Ms Rosemary Brown: The assurance that we can give anybody with a legitimate complaint is if they come through the door or make a phone call or file a complaint

in any other way, it'll be dealt with by the commission.

Mr Curling: I'm going to go on to a new topic. There was a new ruling that came about to disallow landlords to refuse any tenant the right to rent a place because of his income level. This was applauded in some respects. Some people felt they were being denied, because it determined if they can afford the rental of their accommodation. Do you see this coming within the banks where one goes to get a loan and the bank refuses the customer, saying, "I don't think you have enough income to borrow so much"? Do you see that coming in denying one's ability to pay back?

Ms Rosemary Brown: I was just told that the banks are federal and the trust companies are provincial and credit unions are something else. I believe that as long as criteria are established in such a way that exclude people, that discriminates, they can come and file a complaint with us.

Mr Curling: But the banks do that every day. As a matter of fact, those who are low-income seem to pay more interest rates than those of higher income, so they do that.

Ms Rosemary Brown: We can't deal with the banks because that's federal. They would have to go to the Canadian Human Rights Commission.

Mr Curling: That's an interesting case, because this is the problem we have too. Here comes our bright light again. It is very interesting, because the fact is some people are discriminated and they don't feel that they're being discriminated, federally or provincially.

I know what you're saying, and people are caught in this kind of confusion, that this is not my jurisdiction. Enough frustration comes, even with people in my constituency office, when they have a case and they say, "Who sent you?" Even the municipalities said, "It's a provincial matter, you see," and by the time we're finished with them we send them federally. There's a lot of confusion there.

Mr Perruzza: You've already blamed someone else.

Ms Rosemary Brown: I think it's the Fathers of Confederation we have to blame for that one. They're the ones who started all of this. It has been pointed to me that we do make referrals to the Canadian Human Rights Commission, so if you have problems with the bank—

Mr Curling: Always, with the bank.

Interjection: Call up Chrétien and get him to do something about it.

Mr Sean G. Conway (Renfrew North): I've enjoyed your presentation today and I just wanted to quickly go through a couple of issues. The Donna Young report certainly attracted a lot of attention. A lot of people, myself included, read the reports of the report. While I think we understood some of the underlying hope and expectation of the reporter, in this case Ms Young, we were really shocked at some of the line of argumentation that was advanced. There was of course much ado about that report.

I guess my question for you today is, just from the point of view of the commission today, what is your view

about that report and some of the rather breathtaking and unsettling recommendations that were contained within it?

Ms Rosemary Brown: The report was prepared for the commission. It was an internal document to assist us in terms of developing some of the issues around anti-racism which I mentioned earlier. It has been reviewed by senior management staff and we have looked at some of the recommendations from the report in terms of how to deal effectively with cases involving allegations of racial discrimination.

Some of the recommendations in the report have assisted us in the development of guidelines for staff in investigating race-based cases. Those guidelines, as I pointed out a couple of times this morning, are going to be ready by the end of this month and they will certainly be made available to all members of this committee at that time.

Mr Conway: You mentioned in your submission this morning, and I'm quoting now from page 13, "We have also dedicated considerable care to the development of a series of guidelines intended to assist in the investigation and analysis of cases based on race." Then you go on in that paragraph to talk about how the "subtlety and pervasiveness of racism" is something which is only now coming under public scrutiny.

I'm not sure I agree with that assessment, though I think I understand where you're coming from. Again, I don't think there is anybody in the Legislature or I hope not too many in the broad community who would dispute the notion that we have to do something about the systemic issues here.

Having said all of that, when I look at—and I just have the reports of the Young report; I have not read the full report. I don't even know whether it's available. The background paper that was supplied to the committee by the legislative research department provided, I thought, a pretty good summary of that report. That is, I submit to you, the kind of thing that has the potential to drive the moderate middle of this province and country away from you in a more dramatic fashion than you might even imagine.

I guess my question is, I expect that the initiatives to which you make reference on page 13 are certainly not going to be building on what seem to be some of the central, core arguments that Ms Young advanced in her paper. I say that because there will be a number of people out there who will read the report of the Young report and it will confirm for them their worst suspicion.

Ms Rosemary Brown: Can I just start out by correcting page 13? As I said before, I did take licence with my prepared notes. What in fact I did say, because I did change that, is:

"The sophistication of the subtlety and pervasiveness of racism is only now being acknowledged publicly. We now know that the crudity of signs saying 'whites only' has been replaced by various and insidious restrictions which ensure that regardless of accomplishment or merit, the whites-only policy still applies in many circumstances, keeping doors closed to persons because of the colour of their skin."

I think there is a difference there between what I actually said and what I attempted to say. I'm sorry; I corrected this last night before going to bed. That's the reason why it's not in here.

The Donna Young report is a document which was prepared for the internal use of the commission. There was never at any time any feeling that everything in that report was going to be accepted as gospel and implemented. It's the same as the Cornish report; the same as any other report that's been prepared for us: We take it, we analyse it, we pull it apart, we debate it, we discuss it, and out of that, over the period of time, now is being crafted very carefully a series of guidelines to assist us in dealing with this really problematic area of our lives, the question of discrimination based on race. I don't think we should give the Donna Young report any more power than that.

1520

Mr Conway: Let me just take you back to Alan Borovoy, someone I have known for a long time and someone whose opinion, while I don't always agree with it, I certainly have to respect. Borovoy, I think, on the case of the corner stores and pornography, was quite upset, as I remember his position, around what he thought was the misplaced enthusiasm of the Ontario Human Rights Commission.

I've heard Alan over the years come to this Legislature, and as I think about what he said about just the orientation of the Human Rights Commission of Ontario in that case, I'm sitting here thinking, "What would anybody who professes any regard for civil liberties think of the Donna Young report?" I accept that it's only an internal report, but that this report got written that way by anybody in 1993 is really off-putting and quite frankly upsetting.

I understand what you've said by way of response, but when I listen to people who want to see the world change out there, they understand that there is a significant problem, they are extremely suspicious of those people in government who imagine they've got social engineering capacities that are going to be of a very significant and intrusive kind, that are going to fix a whole series of problems that may not be quite as fixable as some of these social engineers imagine.

When I read the Donna Young report and when I think about what Borovoy—I'm not talking about some nattering nabob of the provincial opposition, but the sainted Alan Borovoy—said about the orientation and the attitude of the Ontario Human Rights Commission in the corner store case, I worry about just what kind of means the good people at the Human Rights Commission are contemplating to achieve an end which I think we all want.

Ms Rosemary Brown: I think that is only going to become clear when the guidelines have been released. That is the only time that it will really be fair game to hold the commission up to scrutiny, when we have issued our guidelines and said, "These are the guidelines which are going to direct the way in which we deal with cases based on race." That is the only point at which there should be any real concern out in the community.

Mr Conway: Can I just ask you quickly about the Cornish recommendations, which are very interesting, very thought-provoking and call for a sweeping set of changes in terms of the way the OHRC is organized and the way it does its business. In early February 1994, what is your view and what would your advice be to this Legislature about the efficacy of the principal recommendations from the Cornish commission?

Ms Rosemary Brown: The commission agrees with the principles upon which the Cornish commission structured its recommendations. We totally agree with those principles. We fully endorse the principle of strengthening the commission's mandate to promote human rights through all aspects of its work. We also endorse the concept of a standing tribunal, which was one of her very strong recommendations, to hear human rights complaints. What form such a tribunal will take, as well as its scope or whatever, is open to further discussion.

But I want to reiterate that I think the basis of the Cornish report is something that the ministry and the elected representatives have to deal with, and having done that, then the commission becomes part of the policy direction or the policy decision about which of those recommendations are workable and are in the best interests of realizing this goal that we all have for this province and which ones aren't. I do not see the Human Rights Commission taking off with the Cornish report and saying, "This is what we want done, and we want it done now." That is not our mandate.

Mr Conway: But for those of us who have been around here a while, I've heard the Ombudsman complain about the difficulties on an ongoing basis with the commission. That's been dealt with earlier in the cross-examination. We've had others, Cornish among them, saying: "The basic problem is that the structure of the commission is rooted in a past that's now largely irrelevant. We have to really recast the entire piece."

I'm again sensitive to what I'm hearing from some, I think, small-l liberal, progressive people who intervene at the Human Rights Commission, who would not disagree with a lot of the objectives you have but who report to me a tangle and an overlap and a lack in some cases of procedural fairness that they think is really, really worrisome, and I'm now talking about lawyers who have reported this to me. But one of the things I notice they're saying to me lately is, "Will you do something up there at Queen's Park, will you decide?" because we're creating a commission, a quarter.

If we were to alter the mandate of the Human Rights Commission, which we may very well want to do in a positive and expansive fashion, having in mind that we've got the new Advocacy Commission and we've got a number of equity commissions, and of course we've got the great Ombudsman's office, which was created in 1975 to solve all problems with procedural and administrative tangles within government, are there any of these other apparatuses that we should wind down?

Ms Rosemary Brown: No, I don't think I'm in a position to talk about other commissions being wound down.

What I really would like you to do, though, as elected

members, is to give us a chance. We're putting into place a leaner structure, a tighter structure. We're really tightening up our time lines and our time frames. We've heard all of those criticisms that you've heard and we've actually listened to them and tried to address them. Give us a chance. Let's see if this thing works.

It's only been seven months since we've really tried to start this. I think the fact that we've decided not to go out and do some big, flashy kind of response, something on the outside—as I said, this is going to be a quiet revolution. We're going to really try and change ourselves internally in terms of how we do business.

At least allow us to fail at that before saying, "You are dysfunctional and you are no longer relevant," because human rights is still relevant, and even as we talk about the evolution of new rights in our community, it makes the kinds of things that we do at the commission even more relevant. So I think we are crucial in terms of the health of the province—the emotional, social, psychological and community health of the province—and we should at least be allowed to see whether these steps that we're taking are going to work or not.

Mr Conway: A fair request. Thank you very much.

The Acting Chair (Mrs Elizabeth Witmer): The time is up. We're going to go until 4 o'clock. We can divide the time, and that will be about 16 minutes each.

1530

Mr Cousens: That's fine. Mr Klopp was opening up the question that I was in before, and there's one dimension of the problem with businesses that have disgruntled employees who come back and make a charge under the Human Rights Commission. What advice do you have for businesses to protect themselves from disgruntled employees who are fired or have problems?

I'm just saying the small businessman is more fearful of you than you think they should be. You say, "Oh, they don't need a lawyer, and they don't need these other things." Is there any advice that you could give them on how to handle a situation? Do you have a little booklet or do you have any words of wisdom?

Ms Rosemary Brown: Actually, one of the things that policy and public education have been doing for some time is responding to requests from the private sector or from any community group for assistance in terms of understanding the code better and learning how to protect themselves, as you say, against violating the codes, consciously or unconsciously. We will continue to do that.

I am troubled by the perception—and I know it exists, you're absolutely correct—that the commission is the enemy of the private sector. We are impartial. We have to be neutral. If we've lost that reputation, we have to find some way of regaining it.

Mr Cousens: You're saying it correctly, but I've seen companies have sessions and seminars and they hire lawyers to do it. None the less, I just wondered if you've got any strategy. Because on the one hand, the complainant finds it very easy to get into the process. Mind you, they become part of the backlog and we'll criticize you for that. On the other hand, I'm trying to look for a way

of at least protecting and showing guidance to those business people who are facing the music. You don't have a specific program.

Ms Rosemary Brown: I can also tell you that there are a number of complaints which have been filed which upon investigation have proven to be grudges, as you've said, without merit, and under section 34, we've just not dealt with them.

Even if they have been investigated and got as far as a commission hearing, the decision has been made by the commissioners not to go to board of inquiry because we've seen that the case has been without merit. You never hear about those cases.

Mr Cousens: No.

Ms Rosemary Brown: Well, I'm going to get that figure for you—

Mr Cousens: Good. I'd welcome it.

Ms Rosemary Brown: —because there have been a number of instances.

Mr Cousens: Ms Brown, I encourage it. I'm just saying that somehow or other people feel there is not the balance and the system is tilted the other way.

There's one other thing that I want to get into before I have my series of questions. I have a 22-year-old son, and when his friends come around they enjoy picking my brain and sometimes beating me up on things provincial. One of the issues that comes out is reverse discrimination against white, Anglo-Saxon young people. They have illustrations where they have been, they feel, cut out of the system and that they themselves are now somewhat disfranchised, that they have lost some of their rights. It's a perception again, but I think Ms Ziemba, with her program—

Mr Perruzza: Do you discourage or promote it?

Mr Cousens: I'm opposed to any kind of discrimination, but there is the reverse side of it, where the whites, Anglos, in their position in Ontario, have a sense in which they fear for their potential and their ability under different acts and under different situations.

I am asking a more specific question. Do you in the commission have a number of those cases brought to you which could be identified as reverse discrimination issues where it's the white Anglo-Saxons, who are in the majority, who are now coming and saying, "We feel that we have been discriminated against"?

Ms Rosemary Brown: I just want to start out by saying I don't believe that there is such a thing as reverse discrimination. Discrimination is discrimination. If you discriminate against a white person, you're discriminating the same way—

Mr Cousens: Only to the extent that it describes the group within our society. Then in that case I use the term.

Ms Rosemary Brown: Okay, but I think we should use the term "discrimination," because then it makes you part of the community at large rather than—

Mr Cousens: I stand corrected. I'd like to think that, but they call it that.

Ms Rosemary Brown: Right, but remember that

we're trying to educate each other.

Mr Cousens: I don't like discrimination of any kind.

Mr Curling: Sensitive, aren't you?

Mr Cousens: Watch it, Alvin. You're picking on me.

Ms Rosemary Brown: Section 14 of the code allows the commission to promote special programs. These special programs are designed as positive measures to deal with the imbalance which exists as a result of present and existing as well as past discrimination against certain groups in our society.

We are allowed to do that under section 14. This is because it has been recognized that in fact there is only one way of dealing with some of this existing as well as past discrimination, and that is to go directly to the point and say, "For the present or for the future, we are going to give a boost to these particular groups." So this section 14 has been applied.

I was listening to the CBC this morning and they were talking about that meeting the Prime Minister had last night with the movers and shakers in the financial community of Ontario.

Mr Cousens: There aren't many left.

Ms Rosemary Brown: There was a male CBC commentator who mentioned that finding the women in that group was like looking for a needle in a haystack. They just weren't there. His argument was, what are we doing wrong? How come there are not more women in that area at that level?

Mr Cousens: I've got a few questions, and my time is so limited. I think you've been helpful, but I'm really cut for time. I know what you're saying and maybe we can continue next meeting.

Ms Rosemary Brown: Special measures.

Mr Cousens: I want to talk about the Fair Rental Policy Organization of Ontario, where it's a common practice for landlords to require that rental payment not exceed 30% of a prospective tenant's income. Could you explain the rationale for this policy?

Ms Rosemary Brown: We believe that such a practice constructively discriminates against people on public assistance and other groups, such as young people who are first-time renters and women, who are protected under the Human Rights Code. We believe that it is possible for landlords to screen the tenants on their ability to pay their rent by using other criteria. Some of the criteria that we suggest they look at would be rental history of people, doing a credit check on them, asking for personal references or asking for a guarantor. There are other means of getting the information they have without this blanket discriminatory decision.

Mr Cousens: I'm going to chase it down a different direction, though. It's gone from 25% to 30% of the person's income, and the NDP government has announced that the rent-geared-to-income ratio would increase from 25% to 30% of income by 1998 to save the government some \$3.6 million. You'd be aware of that policy as it came out in the 1993 expenditure control plan. Do you feel that the commission is acting in contradiction to the NDP government's own policies

when that happens?

Ms Rosemary Brown: No, because the commission is saying we don't care if the landlord says 5% or 1% or 2%; it's discriminatory. What we're saying is, use other criteria.

Mr Cousens: The commission produced a discussion paper on the minimum income requirement in rental applications in August 1992. Did you submit a written presentation to the commission?

Ms Rosemary Brown: Did we?

Mr Edwards: Yes.

Ms Rosemary Brown: Yes, we did.

Mr Cousens: How many meetings have you had with the commission on this matter?

Ms Rosemary Brown: I'm going to allow Neil Edwards to deal with that, because I wasn't around in 1992.

Mr Edwards: Yes, we have had about three meetings so far on that particular issue.

Mr Cousens: Do you feel that the commission has been receptive to your concerns?

Mr Edwards: They have been, yes.

Mr Cousens: Our briefing material indicates that a board of inquiry is scheduled to begin hearings on this issue in 1994. How much is it going to cost your organization to be represented in those hearings?

Mr Campbell: We don't have an estimate at this time.

Interjection: What do your researchers say about it?

Mr Cousens: That's what I'm trying to find out. We don't know anything without asking questions.

Ms Rosemary Brown: We can give the answer after, because then we'll know whether the board sat for one day or four days or six months. We can get that answer for you after.

Mr Cousens: Employers and individuals who file claims before the commission—and I'm speaking of Mary Eberts, Tory, Tory, DesLauriers and Binington, barristers and solicitors—are generally dissatisfied with the functioning of your commission. Do you have any specific recommendations for reform?

Ms Rosemary Brown: I thought I dealt with all of our reform this morning.

1540

Mr Cousens: You don't feel there's a need for any legislative change then, specifically?

Ms Rosemary Brown: Oh, I think there are some amendments to the code which would be of use to us, but as I said, basically the kinds of things that we can do without those amendments are the ones that I outlined this morning.

Mr Cousens: I have a situation here where Russell Juriansz, Blake Cassels and Graydon, barristers and solicitors, said, in a Business Journal article, that you are quoted as stating, "The commission claims that it's neutral, but in fact it acts as an advocate for the complainant. Most of my clients"—now, this is Russell Juriansz, Blake Cassels, saying he feels the playing field

isn't level. Could you comment on that?

Ms Rosemary Brown: Sorry, I was supposed to have said that?

Mr Cousens: "The commission claims that it is neutral, but in fact it acts as an advocate for the complainant."

Ms Rosemary Brown: It's not supposed to; the commission has to be neutral.

Mr Cousens: It says here that you went on to say that you advise your clients "to hold their nose and sign a cheque, because it's cheaper to pay than to prove you're right."

Ms Rosemary Brown: No, that does not sound like Rosemary Brown. I don't make comments like that.

Mr Cousens: I got that from an article in the *Business Journal*, January 1993.

Mr Campbell: Excuse me, who was saying that? Is that the chief commissioner or is that counsel?

Mr Cousens: I'm sorry, that's counsel saying that.

Mr Campbell: That's counsel saying it, not the chief commissioner.

Mr Cousens: Let me just check this. I will get the exact—

Interjection.

Mr Cousens: Never mind, I'll get the background and pass it on to you so that you have the exact context in which these concerns were raised.

Ms Rosemary Brown: Actually, it concerns me that Hansard, though, would be recording that quote as coming from me. I was not here. Let the record show I was not chief commissioner in 1993. Those are not my words.

Mr Campbell: If I might, it cannot be us, because we don't—

Mr Cousens: Can I just make this clarification? It was Russell Juriansz of Blake Cassels and Graydon—

Mr Campbell: That's fine; that's not the commission then, that's private counsel.

Mr Cousens: —former director of the legal branch of the Canadian Human Rights Commission.

Mr Campbell: However, he's speaking as a private counsel when he speaks in this capacity.

Mr Cousens: You never know how a person speaks these days. He was writing in the *Business Journal* and in this article he made the statement that, "The commission claims that it's neutral, but in fact it acts as an advocate for the complainant." Then he goes on to say, "Most of my clients feel that the playing field isn't level." To that extent, it's his comments. I'm asking you to comment.

Mr Campbell: We would not accept that.

The Acting Chair: Excuse me, Ms Brown, are you comfortable now with the clarification as far as Hansard is concerned?

Ms Rosemary Brown: Yes, I am comfortable that it has been clarified, that those were not made either by me or any other commissioner, that it was made by private counsel. That is not an accurate description of the

commission. We are neutral; we do not take sides; we do not advocate either for one group or the other, either respondent or complainant.

The Acting Chair: Mr Cousens, we have just one minute left.

Mr Cousens: Ian Howcroft, policy adviser to the Canadian Manufacturers' Association, was commenting on Bill 79, the Employment Equity Act, and the relationship of the employer community. He was expressing concern about the potential overlap of responsibility between the Ontario Human Rights Commission and the Employment Equity Commission. Does your organization share any concern about overlap between the two groups?

Ms Rosemary Brown: No. We anticipate working in cooperation with each other, as I said, to the realization of shared goals. There has been no protocol worked out in terms of how we're going to do that, but we are supportive of the concept of employment equity and we intend to work with the Employment Equity Commission to see that it is the best it can be. We anticipate they will work with us to see that we are the best we can be.

Mr Cousens: Do you think there's any reason for concern by the employer community about potential overlap?

Ms Rosemary Brown: No.

The Acting Chair: Mr Cousens, that's all the time we have today.

Mr Marchese: I just want to make some quick remarks on the matter of the report written by Donna Young, because Mr Conway raised it. I want to say as a personal opinion that I'm not as shocked by her opinions as others are. I can understand why the commissioners, because it's critical of the commission, would be very, very much disturbed by it. The comments she makes are very raw in terms of what they say. I can understand that and I'm almost sympathetic to the fact that they would be very sensitive to them.

But I take those remarks, unlike Mr Conway, as encouraging things that we need to deal with. It's an opinion of a person, of course, a study done by her; it makes statements about issues of race, racism and how prevalent they are in society, and there's so much more. I have only a brief commentary on the whole thing; I don't have the whole report, obviously. But I would take those statements as something that we should review, to assess whether or not they really apply to us, not in a defensive way but rather as a way of analysing whether or not they are true and, if they are, how we deal with them.

I can understand too, Ms Brown, why you and others might be defensive about the report, because I can see some of the implications it could have in terms of people being very frightened by it and wanting to almost disconnect themselves from it. But I would urge the commissioners and other staff people to use that as a basis of looking at ourselves a little more critically.

If they're found to be not correct, then we can say that, and where they're found to be correct we can say maybe there's something to those comments. We should be evaluating it in that context. I wanted to offer that as a

comment. You don't have to respond to it.

Ms Rosemary Brown: No, but that's the kind of analysis that the report has been going through.

Mr Marchese: I have a few other questions that hopefully will be quick, because I want to ask some questions on hate literature, which might take a moment or two longer.

The Acting Chair: Mr Marchese, I'll just mention to you that Ms Carter and Dr Frankford also wish to speak.

Mr Marchese: I understand, okay. Is the chair the only full-time person on the—

Ms Rosemary Brown: Yes.

Mr Marchese: Is there a case to be made for somebody else being full-time?

Ms Rosemary Brown: No.

Mr Marchese: Very well.

In terms of the issues that you deal with, issues of people with disabilities, there are many cases dealing with that issue.

Ms Rosemary Brown: Number one.

Mr Marchese: How does that relate as an issue to your own offices being accessible? Are your offices accessible or is that something you're doing?

Ms Rosemary Brown: For the most part. At our main office, we have the women's washroom, which still needs some work to be done. The money has now been released and it's going to be done. All of our regional offices are now wheelchair-accessible. We've been attending to business.

Mr Marchese: Good. I would find it terribly contradictory if we're dealing with that issue—

Ms Rosemary Brown: We did it because there was a time when we weren't accessible.

Mr Marchese: Great. Obviously organizations can't represent individuals as they take a case to the Human Rights Commission. Is that correct?

Ms Rosemary Brown: Yes, you are correct. The only exception to that, I think, is a guardian representing a child or something.

Mr Marchese: I can see where there's a case to be made, where we have an issue of literacy or class—and they're always interrelated—where an individual doesn't have the skill or feels that he or she doesn't have the skill to be able to take the case and needs to have an organization to represent them. What is your view of that?

Ms Rosemary Brown: That's got real merit and it's worthy of consideration. Neil is telling me something here.

Mr Marchese: Neil can answer.

Ms Rosemary Brown: CERA, that's right, yes. They do. CERA does that, and so does ARCH, on behalf of the disabled community.

Mr Marchese: So organizations can do that for individuals.

Ms Rosemary Brown: They can apply for intervenor status at the boards of inquiry.

Mr Marchese: But does that fall within your mandate or does the code have to be changed to allow, in general, for organizations to represent individuals?

Mr Campbell: They can represent, but they can't file a complaint. There's a difference.

Mr Marchese: The point would still apply that if it's a literacy issue where individuals obviously don't feel they have the skills to do that—

Mr Campbell: Then someone could represent them. Someone could come before the board of inquiry, if you will, and represent them.

Mr Marchese: At the board of inquiry, the final stages.

Mr Campbell: Yes, but clearly also we have that right now in our own procedures where people who have problems with English as a first language can be "represented" by someone.

Mr Marchese: I'd love to explore that when you come back, because I know you're coming back. I'll explore that issue a bit in detail when you come back.

I wanted to ask, on the whole issue of hate literature, you're obviously faced with some contradictory matters that you're dealing with, one where the act protects the freedom of expression and the other where someone has to prove intent to infringe on another person's rights, so as I understand it, that is a contradiction that you face. The code obviously limits you in terms of what you want to do.

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Ms Rosemary Brown: Yes, that's right. We would be much more effective if the code gave us a better mandate to do that. But we realize that we can't just depend on the Human Rights Code and that the Criminal Code too is another option in terms of its ability to deal with that.

Mr Marchese: So if there were a recommendation that you would make, that would be one of them obviously.

Ms Rosemary Brown: Absolutely, that we would support enforcement under the Criminal Code being looked at and also an amendment to our own code to make it possible for us to move in that direction.

Mr Marchese: Madam Chair, my colleagues have questions as well.

Ms Carter: I just wanted a little bit of expansion on some of the points you made in your presentation this morning.

Under the different things that you listed that you are doing in the commission, under number VII was "training and development." You talk about, "For the first time, adult learning principles are being applied in a cohesive manner." I just wondered if you could explain a little bit what you mean there.

Ms Rosemary Brown: I'm going to turn that over to Scott.

Mr Campbell: I can speak to that. In the past what has happened in terms of traditional training, it's been very much a classroom-based training where somebody stands up at the front of a classroom and teaches. It's sort of like, "When I went to school," and so on.

In terms of adult learning, adult learning brings to it the basic philosophy that adults already have an awful lot of knowledge, already have an awful lot of ability and therefore you take that knowledge and ability and, using that, enhance the knowledge and ability that people have.

Therefore, for example, you would have less lecture method and more interactive methods in terms of case studies, in terms of people working in groups, in terms of people making presentations to each other, those sorts of things. That's what we're talking about when we talk about adult learning principles. Does that help, Ms Carter?

Ms Carter: I guess so, yes, and there would be a few days taken out of each employee's working time to do this?

Mr Campbell: What the chief commissioner said in her remarks was dealing with the concept of how people learn so that we are now developing training packages that are more learner-centred, that are more centred around how adults learn as opposed to how children learn. In the past we've never made that distinction.

Ms Carter: Okay, thanks. Under number VIII, "organizational health," you stressed anti-racism principles and developing that side of your institutional awareness, if you like. I guess that's where the Young report came in. I'd just like to add my comment to that. Of course, people said, "Well, you're saying that the people accused of racism are guilty until proved innocent."

But it seems to me that in the ordinary legal world, where you're talking about innocent until proven guilty, you don't say, "We haven't got a case to answer here because we're presuming somebody is innocent; we're just suspending our judgement, not treating them as guilty and we're still going to go on and make this inquiry," whereas you were talking of inquiries never being proceeded with because the complaint wasn't taken seriously in the first place.

Ms Rosemary Brown: Actually, the report just recommends that the complaint should be treated as though it were a legitimate complaint.

Ms Carter: Which is what is done in the ordinary—

Ms Rosemary Brown: Yes. It wasn't about assigning guilt or not.

Ms Carter: I was just wondering whether racism is unique in this respect. I mean, obviously we're dealing with a lot of different categories here, disability and all the other things that people can be discriminated against because of—are there not the same problems related with these other issues, of comprehension as to what is involved, or is racism unique in that way?

Ms Rosemary Brown: I think the interesting thing about racism is that it's probably one of the oldest forms of prejudice that's been recognized. If we really started to investigate our history right back to anthropological times, we might find that discrimination against people with disabilities is probably as old, or discrimination against people based on their sexual orientation is probably as old, but it has never been accepted legitimately as a prejudice which is abhorrent and which

we must bring to an end.

Part of that—well, I don't want to get into that because that's a very long and convoluted discussion about racism, but certainly the triggering of human rights and the Human Rights Commission came about as a result of communities' concern around issues of race and issues of creed. Those are the two cornerstones that started it. But I think we've always been prejudiced against people who are different, for whatever reasons.

Ms Carter: So there could indeed be some need to raise awareness on some of the other categories as well?

Ms Rosemary Brown: The commission has been doing a very good job on that through some of the literature, as I mentioned earlier, and the audio tapes and using different languages and focusing in on some of the newer issues like sexual harassment and our accommodation guidelines and those kinds of things.

Mr Robert Frankford (Scarborough East): Is mandatory drug testing, say in the workplace, an issue that you've had any cases on or ruled on?

Ms Rosemary Brown: Yes we have, actually. There is a case that is currently going forward. We are concerned about the whole issue of mandatory drug testing and I know it's something that the Canadian Civil Liberties Association, Alan Borovoy, who was mentioned earlier, is certainly on our case about, and also the Canadian Human Rights Commission, so it's an issue that seems to be of concern in a very wide area. We will be following the proceedings of the Canadian human rights case which is presently going before a board and seeing what the results of that are, monitoring it.

Mr Frankford: So you'll be using that as a precedent?

Ms Rosemary Brown: We're hoping that we will be able to benefit from whatever decision is handled there. I want to add, however, that the code is not necessarily the only piece of legislation or even the best piece of legislation for dealing with this particular issue.

Mr Frankford: Another area that one keeps reading about is in the genetics. One keeps reading about the ability to do genetic testing to predict the occurrence of diseases, of cancers or schizophrenia or whatever. In what one reads, they talk about the potential of identifying the likelihood of that occurring, and it seems to me that could lead to considerable discrimination within, say, insurance policies or employment. Have you given any thought to that issue?

Ms Rosemary Brown: Under section 25 of the code, insurance companies have been given the right to exclude, because of pre-existing handicaps and other instances that will increase the risk—because they deal in the issue of risk, because they deal in the business of risks they have been given this particular dispensation. Whether they could expand this to cover everything that's genetic, you know, research revealing to us in this day and age, I really don't know. We haven't actually had a case.

Mr Frankford: It would seem to me that they could reduce their risks considerably but at a real cost to the people who are unfortunate enough to have that condition

identified. Maybe it would turn out that the prediction was wrong.

Ms Rosemary Brown: Yes. It's something that we would have to have a case and do the investigation and follow it through.

The Acting Chair: At this point then I'd like to call a recess. Tomorrow we will meet at 10:30. I would just remind you we don't start at 10 o'clock.

Ms Rosemary Brown: Madam Chair, before you close, can I just say a couple of words in closing?

The Acting Chair: Certainly.

Ms Rosemary Brown: I realize that over the next couple of days this committee will be hearing from a number of people who will have a lot of good things as well as a lot of negative things to say about the commission. I'm just asking the members of the committee to bear in mind that much of the criticism which they will

be hearing will be based on the history of the commission, and to remember the new initiatives that we've put in place and to weigh what they're hearing against the impact that these new initiatives will have. In other words, give us a fair hearing.

The Acting Chair: Thank you very much, Ms Brown, and thank you for the staff that you have brought with you today. I think you have demonstrated throughout the day that you have made a sincere attempt to make a difference. We're just starting now to see some of the positive difference that is being achieved. We'll certainly keep that in mind.

Mr Curling: That is why we asked them to come first.

The Acting Chair: That's right.

The committee adjourned at 1602.

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Conway, Sean G. (Renfrew North/-Nord L) for Mr Bradley
Cousens, W. Donald (Markham PC) for Mr McLean
Klopp, Paul (Huron ND) for Mr Mammoliti
Perruzza, Anthony (Downsview ND) for Mr Waters

Clerk / Greffière: Mellor, Lynn

Staff / Personnel: Pond, David, research officer, Legislative Research Service



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Standing committee on
government agencies

Comité permanent des
organismes gouvernementaux

Ontario Human Rights Commission

Commission ontarienne
des droits de la personne

Chair: Margaret Marland
Clerk: Lynn Mellor

Présidente : Margaret Marland
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 2 February 1994

The committee met at 1056 in the Trent Room, Macdonald Block, Toronto.

ONTARIO HUMAN RIGHTS COMMISSION

MARY CORNISH

The Chair (Mrs Margaret Marland): I call this meeting of the standing committee on government agencies to order as we continue our review of the Ontario Human Rights Commission. We welcome Mary Cornish. Thank you for being a little early, because our first deputation was not able to be here. Do you wish to make an opening statement?

Ms Mary Cornish: I understand the members of the committee have invited me to appear today. I'd like to give you, before I hand it over to questions, a brief review of some of the recommendations the task force report I chaired made concerning the Ontario Human Rights Commission.

As you know, my task force report was in June 1992, so it's now a year and a half later from that. Actually, I had recommended the creation by this point of a standing committee on equality rights. I had hoped that by this time we might have moved on and have been enforcing and dealing with monitoring a new human rights system in Ontario. As you all know, that is not the case. The legislative timetable the task force had set up was that a new system was to have been introduced in the fall of 1992 and passed in the spring of 1993.

While I and members of the task force are quite concerned at the complete inaction on the task force report, I also want to say, as we indicated in the task force report, that the issue of equality rights in Ontario should be a non-partisan one. Certainly the government has the responsibility for implementing the amendments, and for that it needs to be held accountable. At the same time, the task force report called for the opposition parties to work in a partnership with the government to reform the system. For the purposes of this discussion, I understand the committee wanted a more extended time to deal with questions, so I would certainly appreciate it if the topic were approached in a non-partisan fashion in an attempt to actually find a solution to the problem. I'll just start with that background.

I think all of you have received a copy of the task force report. It's rather thick, and it's not that great bedtime reading or that simple to read, so I'm going to give a brief overview of it. I also had sent over this morning, in case there were to be discussions in terms of the interrelationship of the Human Rights Code and the Employment Equity Act, the submission I had made in the summer on the Employment Equity Act itself.

The vision the task force had was to have a human rights system that was an integrated system and one that focused on systemic discrimination, that this was the crucial need, that patterns of discrimination were quite deep-rooted and that the entire system needed to be

reworked in order to address those issues. The system we proposed really restructured the Ontario Human Rights Commission. We proposed a system where there would be a combined equality rights tribunal that would consider pay equity, employment equity and human rights. The system had a Human Rights Ontario, which was the renamed Human Rights Commission, and that commission would operate in a way in which it was not responsible for the day-to-day filing of human rights complaints. The human rights adjudicative system would in fact be set up more like other adjudicative systems, like the labour board, for example, the Ontario Municipal Board, a variety of those boards where you just file a complaint with the actual tribunal you're adjudicating in front of.

The Human Rights Commission itself: We had found in our review of it that many of the difficulties it lands in result from the conflict in its responsibilities. One of the most important things, we thought, was to restructure it so that it did not have to deal with the enormous amount of daily individual complaints it receives, that if it focused on systemic complaints it could set up a system whereby more and more individual complainants would not have to file those complaints because matters of a systemic nature had been resolved. Employers, landlords, service providers would not be faced with as many individual complaints because they would be working with a revamped commission to try and deal with some of these issues on a more widespread basis.

We also tried to set up the commission in a structured way so that some of those responsibilities were divided up. You'll see that in the commission we proposed, there were to be a number of commissioners. Let's just take one of the ideas we had; it may be something people want to discuss.

In the task force hearings, certainly we found a disillusionment with the process from both the equality-seeking community and also from the respondent community. Both communities appeared to have lost faith in the process by which a complaint would be dealt with, both from the point of view of the complainant and from the point of view of the person who was responding to it.

One of the things we wanted to do was to restructure the commission so that, for example, there would be a commissioner for compliance services. This commissioner would be somebody who came from the respondent community and who was in fact a leader in that community, either from the landlord community, the employer community, the service-provider community: a leader in providing equality rights in their particular area. That commissioner would then be responsible for liaising with those communities to assist them in sorting out how to comply with the act. That would be a specific role. The respondent community would have somebody within the commission they could actually work with, as many people wish to avoid actually having a hearing or getting into the more adversarial aspects of the process.

That was one idea we had. The other was this whole concept of having equality rights centres throughout the province which would now be responsible for providing the advice and assistance to complainants, as the commission would no longer have that responsibility or conflicting role. We suggested a commissioner for advocacy services who would be responsible within the commission for funding these equality rights centres. You would then have a commissioner responsible for essentially the respondent community and a commissioner responsible for the equality-seeking community.

There was also to be a commissioner responsible for policy and research and a commissioner responsible for education. Education was seen as a very key function. It was also a way of restructuring the commission so that commissioners in fact had a role. Many commissioners spend a lot of their time—their meetings are taken up with dealing with individual cases that come before them; they have to decide whether to appoint a board or not appoint a board, so they get into the minutiae of reading large files concerning this issue. They wouldn't have this role any more, but now you would have a set of commissioners who actually had very distinct responsibilities that were directly related to their strategic mandate.

The other recommendation related to the commission actually having regulation-making authority. The way we had restructured the commission, having, for example, a commissioner responsible for the respondent community and one for the equality-seeking community, was also to provide some balance within the commission as a whole. Once you'd provided that kind of balance, you could in fact give the commission this regulation-making role, because many people often complained, from both communities, that it isn't certain what is right and what is wrong. In other words, they need more certainty in what is considered to be improper conduct. For example, in the US around disability issues, there are very specific statutes which outline in some detail what accommodation is required, or not required in certain circumstances.

One of the issues we looked at is whether by giving regulation-making power, which would only be undertaken once you'd had a full public consultation, you could provide more definition as to what are human rights and what are human rights responsibilities.

In relation to that as well, it brought up the whole role of government. As you know, government plays a number of roles in the province. It plays the role as the major employer. It plays the role as a major service provider. It plays the role of the keeper of the public purse, and it plays, in the normal situation, the maker of regulations and law. It puts a government in a very conflicted relationship to a human rights commission, which is why we attempted, you'll also see, to separate the appointments process for the commission and the commissioners from the government itself by setting up a separate appointments committee, to ensure that the process was independent and to recognize that the government did have this number of roles, roles that were quite legitimate.

Instead of having a regulation hearing—well, now regulations wouldn't even come before a legislative

committee. It would just be whether the cabinet decided to pass the regulation, and it may decide to or not based on the consultation it had. But we envisaged a system where the commissioners would hold a hearing and the government would appear in front of the commissioners, and it may well separate out its roles. It may say, "As an employer, we find these accommodation guidelines in relation to disabilities," for example, "just too overwhelming. Do you realize it would cost us this amount of money to do that?" It could also say, in relation to its role of the public purse, either "We think citizens would think this was appropriate," or not. It could also, in its other role as a defender of equality rights, say, "But we need this, because the government should be a major defender and promoter of equality rights within the province." It allows you to separate out those roles and know when and how those roles are being played out.

Those are some of the ideas in the report, as I understand it, and from only briefly looking at the paper this morning I understand you heard from the commissioner yesterday. I can tell you that I don't have any information on what's happening with our report, so I can't tell you at what state it's in. Certainly there has never been any public response to the report, and as I understand it there are no current legislative amendments being brought forward.

Since the report, the changes I have noticed in the commission are that certainly there is a higher level of cases going forward to boards of inquiry than had gone forward before. I don't think, from what I can perceive, there is any significant more staffing of the commission in terms of its resources.

We continue to experience, as a law firm, very long delays in terms of the complaints being put forward. It's probably true that there is in some ways less of a backlog, except that I have quite a serious concern, which was also a concern expressed in the report, about how the process of attempting to get rid of a backlog leads to a process of settlement which I don't think is the best way to go about to ensure that the equality rights and responsibilities of everybody within a particular complaint are respected.

It has put an enormous pressure on the commission. For example, the legal staff are now attempting to carry forward all these cases that are going forward to the boards of inquiry, and because they still have carriage, everyone has to wait until there's a lawyer available to do it. This is a whole problem with the commission continuing to have carriage and yet being under a very serious responsibility to get the cases put forward. I think part of the problem is that, with the best of goodwill, the structure just doesn't work, and it needs somebody to pass a structure that does.

Those are my comments to begin with, and I'd be pleased to answer questions.

1110

Ms Margaret H. Harrington (Niagara Falls): Basically, you are saying you want a very basic change here, a change in the code, which would be opening up some legislation.

First of all, I want to say how important I believe education is and that whatever the future structure of the Human Rights Commission is, I would like to see education given a very prominent part to play. I believe it's all about changing attitudes and enriching the quality of life for every citizen of this province; not just answering one individual complaint, but having that reflected in attitude and behavioural changes for everyone.

Yesterday we had an extensive presentation from Ms Brown, and she talked about eight initiatives that have been going on in the last year. Are you familiar with what she told us yesterday? Have you got a copy of what she said?

Ms Cornish: No.

Ms Harrington: I think it would be good to give you a copy.

Ms Cornish: That would be great. There hasn't been a lot of public education of the initiatives; let's put it that way. If somebody has a list of them, maybe I could comment about whether I've been aware of them.

Ms Harrington: Yesterday we heard that there is substantial change going on. Mind you, it is not a change in the code, not legislative change but regulative types of changes. As she put it, they're changes from the inside out, looking at their personnel, their attitudes, their way of working, their process. It seemed some very substantial hands-on improving of how things work, certainly the amount of case load and how it's processed, and a little more basic than that too, in the attitude towards the people who are complainants.

I was going to ask you if you felt this was the direction you would approve of. I gather you would want to go further. Your last statement in your presentation was that the structure doesn't work, which is very—

Ms Cornish: Basic.

Ms Harrington: Yes. So do you feel the initiatives we heard about—there were eight of them—are in line with the way you want things to go?

Ms Cornish: I don't know about these initiatives. I'm just quickly looking through it. They appear to be related to attempting to make the current system more accessible by ensuring—for example, take the customer service program. It was a fairly basic part of the task force report, and what was said at the time was that there had to be a more consumer-oriented perspective on the part of the commission in how it handled its mandate, that it had historically handled its mandate in the fairly paternalistic fashion it knew how to deal with human rights, and of course had carriage of it so was able to proceed along on that basis.

Part of the really fundamental change the task force saw being initiated is to take away their carriage of each complaint, and that hasn't happened. In my view, some of what is being done here is an attempt—and given there have been no legislative amendments, it's probably an appropriate one—for them to try within their current mandate to figure out how to make it work more effectively. But it still leaves them with being driven by this case load and being driven by having to make the decisions in each and every complaint.

This sounds fine, except I know that cases can take two years to be assigned to an officer. It may be great to have a quality assurance program, but if you don't even have an officer investigating your complaint, you don't feel too assured. Maybe when you get there, the person has more of a customer orientation and there may be better standards for how you deal with it, but you still have a fundamental problem. Being driven by the case load also means that when you get to the investigative process there's only a certain amount of time. It's quite routine that we get letters saying, "Thank you, but there isn't an officer assigned and there won't be one assigned for another year." It's a real problem.

Ms Harrington: There's much more to go into, so I will let my colleagues continue. I just wanted to throw out one thing for all of us to think about for the system you were proposing. We haven't seen any costing on it, so I'd just like us to think about what that might cost as we're thinking about your suggestions.

Ms Cornish: People raise this. At the time we proceeded I actually attempted to get it costed, but the Attorney General's office didn't have the time to cost it before the report was due. I can't imagine that the government hasn't costed it since. I would welcome the discussion about the relative merits of cost versus the advantages of the system, but we never get down to that. This is just a little rumour that goes around, that it's not being implemented because of cost. I get it as a little rumour; nobody ever actually says, "This is it," and we don't get it.

I'd be glad to have somebody cost it and then I can see whether I think the costing is accurate, and then we can start to deal with what the costs are of people who sit around and wait and have nothing happen about their human rights. Today we have a report on racism in the correctional system. That's something that could have started to be dealt with a year and a half ago, and there's a whole cost to that with a system that doesn't operate on a systemic basis. I'd be glad to have this discussion about cost, but it would be good if we could get out into the open what the concerns are. It appears that the commission's been told: "Move ahead and do your best with what you've got. That's it." That's my sense. Nobody tells me that, nor was I consulted about what they're doing, so I can't tell you.

Mr Rosario Marchese (Fort York): I find your presentation very interesting, comprehensive as well in terms of the scope you're attempting to get at by way of changes. I'm very much interested in the systemic changes, because unless you get to systemic problems you can't ever begin to deal with all the individual cases that come before you. It's going about it the wrong way by dealing with individual cases to get to the systemic. In fact, you may not ever get to it unless you deal with it over a long time, case law upon which you build and then you change the system. By that time all of us would be dead, I suspect. I'm interested in these systemic changes and would be interested in the opposition's remarks to see what they have to say about that.

1120

I have some questions around accountability. You

talked about giving regulatory-making power to this new board before which the government would appear as well. To whom would they be accountable? The appointments process would be done by them, presumably very fair and based on people's skills and the needs, but ultimately to whom would they be accountable?

Ms Cornish: The way the structure worked was that the Premier would appoint an equality rights appointment committee—I think I said there were three people on that—and the equality rights appointment committee would then appoint the chief people in the system, the chief commissioner and the commissioners, the head of the tribunal. The top people were appointed by that independent committee, but the government appointed the people who did it.

Mr Marchese: I see. They would be accountable to the government, presumably.

Ms Cornish: Right. But there was more accountability built into it than that, because I appreciate the concern: This is a major public responsibility and there needs to be accountability of everybody with respect to it.

That was one level of the accountability. The other was establishing a standing committee on equality rights to which the chief commissioner reported every year. I've set out a specific set of responsibilities she would have to report on: "During the last year, to what extent did you reduce the state of discrimination in this province? In what way did you do it? Did you emphasize education? How did you do it?" There would then be some ability to measure progress, because one of the most frustrating things about this area is trying to measure whether things are getting any better. It's hard to see it, so you need people looking at it from that perspective too.

The chair of the equality rights tribunal would also report back to the committee, not on the basis of how they decided cases but just in terms of trying to sort out the process by which cases are being dealt with.

So there were a number of ways of attempting to get some accountability.

Mr Marchese: But ultimately, presumably the government would be able to give direction to the equality rights committee and that body would then deal with all the others down the line. Is that it?

Ms Cornish: Yes. The other side of it is that there is precedent for having a commission develop regulations. This isn't the only one. In the securities field, for example, the securities commission develops regulations. I'm just trying to say that it's not unheard of.

Mr Marchese: I'm not disagreeing with the concept of giving the commission the regulatory power. But if you were to give them that regulatory power, would that equality rights committee be ultimately accountable to the government, or in giving them the regulatory power, has the government disassociated itself in terms of being able to give direction?

Ms Cornish: I'm just trying to think how standing committees work. As I understand it, a standing committee is composed of all members, and presumably the government ends up being able to outvote the opposition.

But in the end, the standing committee could not revoke the appointment of a commissioner. In other words, there's the public accountability in that you come forward, but it wasn't suggested in the report that the standing committee actually would revoke appointments. In that sense, it's not as directly linked, but it's a public process.

Mr Marchese: I'd like to pursue that, but I want to move on to another question. I think we have some concerns about accountability in that regard.

Once we get to the systemic changes, if we were to agree to that, presumably the whole world out there might be very concerned about the power such a group of people would have to deal with these issues of systemic problems. I presume the outcry would be big. The employers would not be very happy about having to deal with the power such a group would have to be able to get to systemic changes. Do you envision a public outcry by some sectors of society with respect to this, or not?

Ms Cornish: I think it's a matter of how you fashion the commission as a whole. One of the things we thought was really important was to give this commission a new start, a start at which it developed a new credibility both among the respondent community and among the complainant community; that if you developed this independent appointments process in which people felt satisfied with the process, you could develop credibility for the commission and for dealing with it that way.

The other side of it is that under the current process, we don't really have any regulations under the statute. For many people, there was a whole issue of whether the guidelines the commission had developed on disability would become regulations. As I understand it, they didn't go any further after they got through the government process and the government didn't want to do it. You have the government itself making decisions but having a conflicting role itself.

It is the attempt to set up an independent process. Maybe we should give it to the Supreme Court of Canada; I'm not sure. But you need to set up some process by which people feel it is fair, that they've had consultation. If you had consultation about the regs it would be a lot more open process than regulations are currently.

Ms Jenny Carter (Peterborough): As has been mentioned, Rosemary Brown said there is an inside-out renewal of the commission going on, and I think she presented quite convincingly that real changes are taking place.

You obviously are concerned that there be a systemic approach to these problems, which I think we all agree with. With the employment equity legislation coming into force, will not that very much do that, certainly in that department? Presumably the number of cases coming to Human Rights would be reduced in any case by other systemic initiatives taking place outside the Human Rights Commission. In any case, there has to be an outlet for individual problems as well, and I think we all hope they will diminish over time. But can you not see the Human Rights Commission as being the place where those go even though the systemic approach is being

taken elsewhere?

I also had the impression from Rosemary Brown that the commission itself does do systemic work. On page 9 of her speech she mentions a regional services and systemic investigation branch. Then towards the end of her speech she sums up some of the initiatives the commission is now undertaking. I don't know whether I can read them all, but she's saying:

—There will be only 250 files that have been around for longer than three years.

—“67% of all the cases closed thus far [this year] were closed in less than six months.”

—They've “undertaken innovative initiatives to encourage voluntary compliance with the Human Rights Code.”

—They've “concluded negotiations with the Ministry of the Attorney General and the Ministry of Government Services to ensure that people with disabilities have access to the province's courthouses.”

—They're working with the city of Toronto over the selection of firefighters.

—They're publishing documents, “providing the province's public and private secondary schools with a resource book entitled Teaching Human Rights in Ontario.”

—They “produced a policy statement on the subject of Sexual Harassment and Inappropriate Gender-Related Comment and Conduct.”

It seems to me that what they're doing goes quite a bit beyond just dealing with individual cases and also that they have improved their performance there. I just wondered how all that seems to you.

1130

Ms Cornish: The issue of the Employment Equity Act was addressed in the report in terms of having both the chief commissioner for human rights in Ontario and also the commissioner for the Employment Equity Commission work together. Certainly in relation to the employment field, the Employment Equity Act is a major step forward in terms of attempting to deal with equity issues, as was the Pay Equity Act, another attempt to deal with systemic issues.

But there are a number of problems or parts of it left out. For example, the Employment Equity Act leaves out a whole set of people who aren't covered under it because of the number of employees necessary before coverage kicks in. There isn't an ability for people to complain during the process. There is a whole set of reasons the employment equity process is quite limited. Furthermore, it doesn't apply to services and whole other areas of the mandate of the commission that—

Ms Carter: Obviously, I didn't think it would cover everything, but there are other things, like the Advocacy Act, for example, that should pre-empt some problems.

Ms Cornish: The Advocacy Act in terms of dealing with systemic discrimination?

Ms Carter: I think it will mean that some people will not get into difficulties that otherwise they might have got into.

Ms Cornish: What I would be careful about is that it's easy to read a paper—I mean, I look here and see the regional services and systemic investigation branch. There's been a systemic unit for years, and the systemic unit had its money taken away from it in order to deal with individual case load. As I understand it, they've now just got a new head to this part of the branch, but if you ask them what major systemic initiatives the branch has actually been able to do, I think you'll find it isn't very significant.

I agree that this is an attempt to restructure, but I think you also have to look at the reality that putting out a pamphlet or doing this, given the magnitude of the problem in the province, is not adequate.

In terms of the other issues, let's go back and look at it this way: What are the downsides of attempting to have a system that really does work? The other side is, is there any measure in here of whether this is reducing discrimination, and in what way? If you look at it, you'll certainly find efforts. The commission, Rosemary Brown and the people involved in it, I've always found to be people very concerned about trying to carry out their mandate the best they can, but I still go back to my basic view that they're hampered by a structure which doesn't work.

Mr Alvin Curling (Scarborough North): It's quite a privilege for us to have you come when we are looking at the Ontario Human Rights Commission in this committee.

When your report came out, I knew how extensive it was. I was aware too that the government was putting pressure on you to finalize it quickly so it could act on it. It's been a year and a half now, and the minister hasn't indicated that she has even read it. We thought that since they were in such a hurry—that isn't partisan; it's a fact. There's no formal report to the House about how she feels about this report, whether or not she likes it and the recommendations.

I don't expect her or the government to like everything in your report, because in my party we don't like everything in your report. We feel there are some very good recommendations. As a matter of fact, the human rights commissioner yesterday stated that some of the recommendations are being incorporated in what she's doing now. As you hear the government side alluding to questions within it, I'm telling you they are also churning it around but have not formally presented it and said, “Let's discuss this and say where it's going to go.” Nothing formal has been done, and I think the suspicion of politicians is based upon these things: Reports are made and no one acts on them. I feel it is about time that we come out clean and say let us look at this report and follow through on it.

You said something that interests me very much, that we should not be into this as partisan stuff and should look at human rights as an issue on which all of us work together.

You criticize in the report the lack of independence of the commission, and in your discussion here you spoke of certain areas of how they could be independent, the format. Maybe what could be done is that the commission, as you said, report to the Legislative Assembly. I'm

looking at the Ombudsman process now, and I think there are certain things that should be done better in the process of what the Ombudsman does and her report to the Legislature. Do you see that the Ontario Human Rights Commission, reporting to that legislative standing committee you suggest—to begin with, in a human rights case against the Ministry of Citizenship, regardless of how independent and how arm's-length, as the commissioner says, it's difficult to really deal with it, because you're talking about her boss, mark you, her boss that she reports to. How do you see a commission like that reporting to a standing committee? Do you find there'd be more independence on behalf of the commission?

Ms Cornish: A major part of the report was attempting to achieve independence for the commission. Also, having a committee on equality rights within the Legislature I thought would be a signal to everybody that it had a non-partisan, important role in our society as legislators defending equality rights and promoting it.

I'll give you the specific areas I asked the commission to report to the committee on. It was supposed to be each year, or, if required, they could come forward more often than that; they were to report on the state of human rights in the province, their own and others' activities in reducing the amount of discrimination in the province; their recommendations for what changes they thought needed to be made in order to increase the rate of reduction of discrimination; and any necessary funding requirements they thought they needed to function better, because of course funding has always been a major problem. When the government can control the amount of staff and resources you get, that can really in essence control whether or not you can do anything about systemic discrimination. If you don't have enough money to do it, you can't carry it out, because you still have people at the door arriving with complaints.

So it was some ability to have the commission come forward and say, "Okay, we're here and we're here and we're there, but we have this problem, we need this money, we need these areas, or"—and this is another part of the report I'd like to emphasize because it's really important, and I think Ms Harrington was mentioning it: education, that if everybody were encouraged to take a more proactive role themselves and government itself, we wouldn't then have people complaining to the commission about matters which could be resolved by proactive measures in terms of service and a variety of other things which employers could be doing, which the government could be doing.

That way, you may well be able to say to people and say to the commission when it comes forward, "We actually think the money should be going in this area," and you could be emphasizing getting things to be operated proactively in landlords: Can we sort out how landlords will develop new policies around renting so they don't discriminate against people who are on welfare? We need some kind of overall policy across the province so we don't keep having individuals going off to the Human Rights Commission and complaining about what happened with their landlord.

There are a variety of ways in which, when you start

to look at it on a broader basis, you could do it. A committee could bring its skills to that as well, and being a public conscience as the legislators.

Mr Curling: Just a quick comment on a section you mentioned. The commissioner spoke about "from the inside out." As you know, the commission didn't even have a policy on racism. I was concerned that a commission that has been in place for more than 30 years had a sexual harassment policy come about, yet on the basis on which it started, race and creed etc, not even a policy on racism was there. They're late coming into that fold.

I want to address the area of systemic division more than systemic discrimination.

Ms Cornish: Within the commission.

Mr Curling: Yes. I got a glimmer of light when you were talking about all these equity places are being developed, and what is happening in the Human Rights Commission. We take this part and set up a commission, the Employment Equity Commission, and think we have solved it. You took pains to say the systemic division is more than the workplace. What has happened is that we've put funding there and set up another bureaucracy, when we could have an equity tribunal board, I think you called it, that could deal with these equity issues.

Do you see this? Now the Employment Equity Commission is somewhere out there floating without a regulation—not yet proclaimed, anyhow—and trying to get its identity out there, and here is the Human Rights Commission having its systemic division. People are coming forward now, at this moment, to the Human Rights Commission, and doesn't this make people see that they cannot be addressed legally? Really, if I come to the Human Rights Commission with a complaint right now, there is nothing addressing me in my employment equity because there is no such thing as an Employment Equity Commission now. Isn't this a kind of disillusioning aspect of how we go about making laws?

1140

Ms Cornish: Certainly it was not my recommendation and isn't my recommendation that the Human Rights Commission and the Employment Equity Commission be collapsed into one commission. What I recommended was that the adjudicative body that was established to actually hear complaints could be collapsed with pay equity and employment equity and human rights.

The reason I don't see that the Employment Equity Commission should be collapsed with the Human Rights Commission is that I think we do need, in relation to employment, a very specific body that can carry that mandate and proceed forward with it. I'm quite committed to that as a concept. I do think, however, that when you get to the final complaint you can train adjudicators who can deal with those equity issues.

But to go back to this issue currently, one of the matters that came up in relation to the Employment Equity Act was the relationship between complaints under the code and complaints under the act, what would happen to individuals coming forward. As we've indicated, the act isn't in force yet, and then even when it is in force individuals don't have rights to complain.

The process that was being developed was that at a certain point an employer may be able to say, "I have a plan, which is a defence to this claim." We don't know when that's going to be proclaimed, but when it is, then you're going to have to deal with the interplay between it, buy at the moment it isn't a problem.

Mr Curling: In terms of the \$6 million that was put in place to look at the backlog—they don't call it that any more; it's case load—you made a rather interesting comment. You said it really does not reduce discrimination. It may of course reduce the workload, because you have put some label behind it and it has reduced the number of files. The paper reflects it's a miracle. My colleague asked, "Do you believe in miracles, Alvin?" Six million dollars could work a lot of miracles. Give it to me, and I'll do that. The fact is that we're addressing racism and human rights issues. As you said, if we don't have something in place, later on that will build up again. The commissioner made that point also, to her credit, that as we are more sensitive and educate people more about violations of their human rights, more will come forward.

It's hard. Some people want you to make comments about the human rights commissioner, a statement about the direction she's going now. I give her full credit for being the first to admit that there are so many things wrong. As a matter of fact, a government member over there in our hearings in the past called the commission a joke. It's rather sad to know that a government member calls the Human Rights Commission a joke. But the fact is that there are serious concerns there. What comment would you have in light of the fact that one of the problems found was that racism existed in the Human Rights Commission? What could the Human Rights Commission do now to raise its image in a positive way? Are there things that could be done to build back public confidence in the Human Rights Commission?

Ms Cornish: One of the things that was recommended in the report was that there be established an advisory council to the commission, that the advisory council be composed of representatives from the equality-seeking community and also from the respondent community and that the chief commissioner and the commissioners consult regularly with that advisory council to try to get some fairly prompt feedback and a relationship between those communities.

I think a lot of what occurs often is misunderstanding about what the commission is doing. Some of it is correct, in that I don't agree with some of the things the commission's doing so I sometimes am critical for proper reasons, if you know what I mean. But at other times people just don't understand what human rights laws are about or what it means to enforce them, so I recommend an advisory council or some ability to actually bring the public into the process somewhat. You are then able, if the commission is operating in a particular area, to have either a respondent community member saying, "This is just too hard for us; we can't do that," or the equality-seeking community saying: "You're not moving tough enough on this. Your failure to take initiatives in this particular area is really affecting our people."

The other side of it, that I've often experienced, is that

when you actually consult meaningfully you get very good ideas about how to proceed. There are both skills and knowledge within the respondent community about how it may be able to help in this process, and similarly in the equality-seeking community, and the commission has to reorient itself to see itself as drawing on that expertise.

I appreciate that it's necessary to have an internal process, but as you can see, the internal process has not been a public one. People don't know what it's about. They haven't involved the community in that process, or maybe they have and I don't know about it. A year and a half later, there may be some significant progress, but people don't understand that and that isn't communicated.

This is always the problem. In some ways we can always understand why something hasn't happened, but what we've got to do—we have a new commissioner. She's only just got there and there's only so much she can do, so nobody likes to be too critical in that sense. That's why it needs leadership from all the parties to actually decide on the direction and move it forward.

Mr Curling: The aboriginal people are concerned that they are asked to operate within a policy that is not sensitive to their needs. Do you believe there should be a separate section for the aboriginal people, or that the Human Rights Commission should be much more sensitive and incorporate the aboriginal people within the entire policy? The process of justice, bringing things to justice, is completely different in the aboriginal community.

Ms Cornish: I consulted with the aboriginal community at the time, and basically their response was, "We weren't consulted about your being appointed, and we're not sure the Human Rights Code should apply to us because we are seeking self-government and we have not dealt with the issue." I don't know what their current position is on whether or not they actually wish to be part of the code and how they see that being done, but certainly at the time they did not make recommendations with respect to it.

What I attempted to do in the report was to at least fashion a process that, if they wished to be part of it, would better facilitate. For example, in the tribunal, I established two levels of decision-making, both a mediative role and an adjudicative role. People may come in and go solely through the mediative role, because many in the aboriginal community find the adversarial adjudicative process quite offensive to their culture. That's why there has been this reporting of circles of justice in relation to the criminal justice community, where the community may sit and discuss an issue as opposed to putting somebody in the stand and examining and cross-examining them. I attempted to set up an adjudicative system that would be respectful of different cultures' ways of dealing with a dispute so that you didn't necessarily have to have one that was not appropriate.

I would not comment on whether they should or should not be part until I've actually heard from them more fully about what they want to do, and then I could make a comment after that. But certainly at the time they

were not happy with the process.

1150

Mr Curling: Do you feel we're not making enough effort to have them included but in the consultative process?

Ms Cornish: It's quite specific. At the time, part of the concern of the aboriginal community was that this was not an issue. They were just in the process of the discussions around the accord, so at the time they were saying, "This isn't an issue we want to devote time to at the moment," and I can't really comment because I haven't had discussions with them since then.

Mr Curling: You don't feel we should at this moment, even though the Constitution and the accord are over—

Ms Cornish: Oh, no. I'm not saying you shouldn't now. I'm just saying that I don't know what their current position is, and there may well be ongoing discussions I don't know about.

Mr Curling: How much time do I have?

The Chair: You have one minute and 40 seconds.

Ms Cornish: You could do a zinger.

Mr Curling: I was thinking about going into an area, but I said to myself, "If I start on that..." Let me go back to your report. I can't remember the phrase or title you used for those community groups.

Ms Cornish: Equality rights centres?

Mr Curling: Yes. Who will be assessing within those? This might take a longer time for you to comment. When I read it, I wondered how qualified these people were. You're going to say, "Of course they are within the community and they can assess whether or not that case goes forward." The question that came to my mind and stays with me was to wonder what qualifications they'd have in both intake and assessing whether that moves on to the second stage.

Ms Cornish: Can I first say that anybody under that system has the right to walk up to the door of the equality rights tribunal and file a complaint. You don't have to go through the equality rights centre to file a complaint. The system is based on somebody being able to walk into the tribunal and say, "I have a complaint." Just in case there was some misunderstanding about whether this other equality rights centre was like another gate—

Mr Curling: It was my fault.

Ms Cornish: What it is a gate to, in a sense, is a gate to resources. In other words, you can walk up to the door of the equality rights tribunal and file your complaint, and I had structured the tribunal so that people there could assist you if you hadn't gone to any of these centres or if they were busy or whatever, or you may just write it out.

The centres would be staffed with what I referred to as advocates. That's the term I used, partly because I wanted it to be a combination of both lawyers and paralegals. There's a lot more of a move now to attempt to have a broader range of people involved in assisting in bringing forward cases. This isn't just in the human rights field,

but in many fields now people are being trained to deal with those kinds of issues who aren't necessarily lawyers. For example, in the labour field the business representatives may arrive at the board and argue cases themselves. Certain fields have developed an expertise in the ability to present cases.

There's a whole chapter in the report about training, training people involved in the system. Certainly it is a major part of the system that those people in fact have to be trained, but what it does is give control to the individual complainant to have somebody whose only interest is theirs. That's the problem with the commission structure. The interest of the investigating officer is not just the complainant's interest. The investigating officer has to balance the respondent's interest, the complainant's interest, and then the institutional interest of the commission in terms of whether they've got to get cases settled or what has to be done.

The purpose of having these centres is to provide some resources that complainants can actually access. Also, I saw it as a major way to attempt to have some cost savings. You would train paralegals; you would try to de-emphasize the legalities of always having lawyers involved in these disputes. You would also, on that basis, therefore have less people applying for legal aid and you would have a system in which you actually developed people with expertise. What often happens is that if somebody goes out to a lawyer, there are not that many trained human rights lawyers. Your average lawyer in some town doesn't necessarily know how to present a case on racism.

Overall, I appreciate the concern, but I think you could deal pretty effectively with the training of the people in those centres.

Mr Allan K. McLean (Simcoe East): You make it sound so easy for people to be able to issue the complaints they would like to.

Your recommendation 85, third paragraph, says, "The commission should adopt a more open, cooperative relationship with community groups and individuals with human rights expertise and allow them to prepare and develop their own claims, and participate in direction of the investigation, settlement and appointment of the board of inquiry." A pretty broad statement.

Ms Cornish: Wait a minute. It shouldn't say "appointment of the board of inquiry."

Mr McLean: So you don't agree with that recommendation?

Ms Cornish: No, the community groups would not be involved in the appointment of the board of inquiry. It shouldn't say "board of inquiry." It should say "the equality rights tribunal."

Mr McLean: That was the first question.

Ms Cornish: Well, there you go. I'm prepared to delete that. It was getting late on June 29.

Mr McLean: I read several of your recommendations, and I really have concerns about the legal aspect of the whole problem of the commission.

While you're here, I wanted to relate a little bit of an

individual's case to you, and I'd like you to indicate to me how this individual, after going through the process we have here in Ontario, could go through what some individuals have to go through and still really not get what she's looking for. This individual was injured in 1989 in Correctional Services, was off work, was let go, wrote to the WCB December 14, 1990, wrote to her member, Mr Drainville, December 14, 1990, for assistance. He never replied or gave any assistance. She wrote back to the deputy minister of corrections. She was told to write to her ex-union president, to go through Human Rights. That was in August 1991. She wrote to Human Rights, Joycelyn Horsford, issued her complaint and it was finally signed in December 1993. The grounds for discrimination were sex and handicap.

This individual now—and this is only a few months after she finally completed and signed her form, after over two years. She'd gone on from 1989; wrote to the Premier in March 1992. He said: "I cannot get involved in this process. I can't help." She wrote to the WCB, Di Santo. Nothing was done. Here's an individual—and that's only an example; there are others like her—who doesn't know who to turn to. What are you recommending in here that that individual should have done two years sooner?

Ms Cornish: Under the system I would have, she could have gone directly to the equality rights tribunal back in—I don't know when the first date was that she identified the problem—and filed a complaint and said that the ministry had discriminated against her on the grounds of sex and handicap. If she decided not to access these equality rights centres, she would go and have a hearing. The way I set it up, the hearing, if I recall, is supposed to be completed within 90 days. Alternatively, if she had an equality rights centre—and there are a whole number set up around the province—she would go to that centre and the centre itself would assist her to actually file the complaint.

This is the real difference in the process. These time frames don't surprise me at all, that people sit there—

Mr McLean: She's told it'll be another two years before it'll be acted on.

Ms Cornish: I understand, and that isn't surprising. Another thing that might happen—let's even say that once it is investigated, somebody says, "Why don't you just agree to this?" She may not know too much or she may agree to it, so then her case is settled and is no longer on the case load, but it may not be a very effective settlement. She may have been able to get more, but she may at that point be fed up. When I say to clients, "I can't get anybody to investigate it for another two years," they say, "What is a system that works like this?" particularly if you remain in a workplace or if you are a tenant who needs housing.

In my view, what is needed is a system in which the ministry, let's say, if that is the employer, all of a sudden, within 30 or 40 days, has to go to a hearing, has to file pleadings and say why it didn't discriminate against her.

1200

Mr McLean: When you're dealing with a ministry,

though, Mary, isn't that different from dealing with an individual company? It appears that one ministry is going to try and help another ministry. This individual who was on full-time at Correctional Services is now on part-time and had a heck of a time to get the part-time job.

Ms Cornish: You mean in terms of whether or not the commission wouldn't act because it's a—

Mr McLean: That's right.

Ms Cornish: I don't think that's why they wouldn't act.

Mr McLean: There's got to be a reason.

Ms Cornish: Well, I have lots of people who are like this. The reason is that there's no officer to go out and do it.

Mr McLean: They got an extra \$6 million to help take this backlog down.

Ms Cornish: There's no officer there. First of all, you need an intake officer to draft the complaint. It goes back and forth, and that process seems to have taken her a period of time. Then once you have the complaint, the complaint is sent to the respondent. Once it's sent to the respondent, the respondent files a questionnaire. Then it sits until it's assigned to an investigative officer, and that may be two years.

Mr McLean: The other one I have is with regard to landlords who can no longer do credit checks on tenants; they indicate that's contrary to the human rights legislation. As a landlord, would you not be able to check out your tenants' credit rating, the job they have, to see whether they're going to pay their rent?

Ms Cornish: There are a number of issues related to it. There's a board of inquiry going on now in terms of this issue in relation to welfare assistance and a landlord's rules around what percentage of income is spent on rent. For example, for most people on public assistance the percentage of their income on rent is always higher than what a landlord would normally like to see, because their basic necessities involve that. I don't know what the particulars of this are in terms of credit inquiries, but there are a number of issues as to whether certain people may have more credit inquiries made about them than other people, whether credit inquiries are made in relation to single women and not to men. I don't know the specifics of it, but I wouldn't be prepared to say that just overall, credit inquiries may not have a systemic impact on certain people.

Mr McLean: There seems to be an overall broad view, because Mary Wood's rent report said, "Credit checks okay for now," and Human Rights indicates in here that that's discriminatory and should not be taking place.

Ms Cornish: It depends, I would say. I'd have to know more about it to sort it out, but I think you'd have to sort out in what way they were doing it.

Mr McLean: Do you have any views with regard to the commission's views on the pay equity bill that was passed?

Ms Cornish: The commission's views on the pay equity bill?

Mr McLean: In the report you did, I don't see much where you follow up with regard to the pay equity. It's really two different things; I know that.

Ms Cornish: I didn't report on pay equity other than to suggest that there could be a streamlining of the adjudicative processes among the three. I didn't deal with the pay equity process.

The Chair: Are we talking about employment equity or pay equity?

Ms Cornish: I thought he was saying "pay equity."

Mr McLean: The Employment Equity Act.

Ms Cornish: Oh, I'm sorry. Then what was the question again?

Mr McLean: I'm just wondering what views you had about that with regard to the Human Rights Commission and how that will affect your final outcome of the report.

Ms Cornish: I think there has to be quite a close interrelationship between the two bodies, and that's what I recommended in the report, in order that there not be an overlapping between the two particular bodies. I think the specific mandate the Employment Equity Commission currently has will be more than enough to keep it busy for quite a while, so I don't anticipate there's going to be a problem of a lack of things to do.

Mr McLean: You mention in your report with regard to education that we should be proactive, recommendation 75. What are you referring to really when you make those comments: "key human rights enforcement strategy to ensure, advance and maintain a culture of equality; human rights...has a unique and important role to play in the area of education to oversee and initiate education activities which will advance its overall strategic plan for the enforcement of Ontarians' human rights."

Ms Cornish: One of the initiatives Ms Carter was talking about—let's take the education system. You may well work with both the school boards and the unions in the province to try and sort out what may be the systemic barriers to the provision of education services to persons with disabilities. That would be one category in which you may say, "We've done a study which shows that the following 10 barriers affect students with disabilities in school, so we've identified that these barriers might be dealt with in the following ways." Then you would meet with those particular groups and start trying to go through it rather than leaving it to a situation where an individual student—and there's just been a lengthy board of inquiry case settled. I think the disabled student's name was Till, who was attempting to be part of the regular stream.

That might be an example of how that student wouldn't have gone through that long process and long board of inquiry because initiatives might have already been put in place as a result of education of school boards. In fact, if I recall, the school board official who commented on the settlement said, "We've learned a lot since Ms Till filed her complaint." The process of learning is important. It's just that it's better if we can have the learning done not at the expense of both the complainants in the process and respondents.

Mr Bill Murdoch (Grey-Owen Sound): I want to say right at the start that I have no problem with a review

of the Human Rights Commission. You can just talk about the backlog, or the case loads, as the politically correct term is now. It needed to be done.

But I really have some concerns about your recommendations for what would be done as a new commission. I think the government has to be accountable in even more ways than it is now. I think we have too many commissions running around this province now, and the government—whatever government it happens to be, not only the one that's in power now but the other ones—always used the fact that it's arm's-length to say, "We'll get back to you," and things like that.

I've sat on the Ombudsman committee for the past three years and there's no accountability there for the Ombudsman at all; that committee's been a total disaster. You talked of a committee being set up here. I can see the same thing happening and it would never get anywhere, so I really have concerns about setting up the structure you have. I think it has to get back to whatever government's in power. They have to have accountability and they have to look after these things, and it's up to the people and people like you to put the pressure on the politicians to do their job.

My office probably does twice the work the Ombudsman ever does—I think so anyway—because we handle those things in rural Ontario. I hear more and more that this is a Toronto problem. I'm not saying there isn't racism and problems with human rights out in the rural areas, but it's not as big a problem as it is here in Toronto and the bigger cities. It sounds to me like we have a problem here that's almost like a two-tier problem.

I'm really concerned about the accountability, that if it goes your way, it would take it away from whatever government's in power, and they'd use that to say, "We've appointed people and they're looking after that." Those people aren't elected and it's tough to get to those people.

And you talk about a commission starting to set regulations. That's really dangerous. We have a commission called the Niagara Escarpment Commission, and if it ever got around to setting the regulations we'd be in worse shape than we are now. That's a commission that shouldn't even exist, and here you are talking about a new commission being set up. If it ever started its own regulations, you'd have every commission out there—and of course we had Sewell running around. If he ever got to be able to set his own regulations—you know, trouble like that.

I really have a problem with what you're saying, because if I get elected I want to be responsible and accountable. That's where I have the real problem. Sure, there are problems, so we have to do something, and I appreciate the fact that you've done this. But one question that I thought you didn't answer—Rosario asked it—is what about the employer community out there? Are they going to like something like this? They only had one person representing them on the advisory committee, and now you've come up with this. If the government adopted this, I think you'd have a big backlash there. Obviously, I don't think you know what they really think

out there if you went by what the commission and the people you had on the advisory committee told you, because they weren't represented.

Ms Cornish: Actually, we did consult. I consulted with the board of trade, the Ontario Hospital Association, a number of the employer communities concerning the issues. It was interesting. I met with, for example, the personnel association and had very good discussions with them, and we had a number of meetings with individual representatives from a variety of employers. As I said before, many in the employer community find the current process extremely frustrating.

Mr Murdoch: I understand that.

Ms Cornish: I certainly felt a majority of them would agree with a process—I think the OHA did not; certainly the personnel association was more favourable to this—by which they had a complaint, the complaint went forward, and they could immediately respond to it. One of the frustrations of the employer community and respondent community is that a charge is made against you and yet, just as his complainant is frustrated that they're sitting there for two years after they file it, the employer files his response and it sits there for two years too.

Many people are quite concerned about having allegations made against them and want to get them resolved. They don't feel they have an ability currently to make the system move forward quickly, whereas if you had this process, which is quite normal in any other adjudicative process—the thing you've got to understand is that being able to file a complaint and then immediately respond to a complaint and get somebody to dismiss it or not dismiss it is the normal way most disputes are dealt with. This process of the commission is quite an unusual way to deal with it. Normally, you just go to the Small Claims Court and you say, "I've got a complaint," and the other side comes forward and you both deal with it. It's the same with the labour board and the same with a whole series. People have to look at that focus, that what we're suggesting on that level isn't unusual.

For many, and it depends to some extent on how sophisticated employers are, it isn't in their interest, necessarily, to have a functioning human rights system if they operate on the basis that, now, they know if their employee goes to file a complaint, he or she can't really do anything. That's okay, that nothing really happens. I think less sophisticated employers think that. More sophisticated employers actually want to get the thing sorted out. You'll probably find there are some differences within the employer community about how they see it.

Mr Murdoch: I'm sure there is. I just go back to the fact that I think you have to hold whatever government's in power accountable for what's going to happen. If you put in more commissions and more bureaucrats and more civil servants running around looking after it, you'll just bog down even worse.

Ms Cornish: But the risk is that you hold them accountable, and currently people feel pretty frustrated that they don't seem too accountable—and haven't in the past. I don't say this just in relation to the current

government. I've had a lot of experience over the last 18 years with all of the parties here.

Mr Murdoch: I totally agree with you.

Ms Cornish: The problem with them having too much control is the very problem we have currently, which is that we don't have any action either.

Mr Murdoch: I still believe we're a democratic country and that's why we have elections. I understand people get frustrated with the system, but if you start putting more people out there who aren't accountable and aren't elected—and we see that in a lot of commissions; I just mentioned a couple of them—then I think we're just going to be in worse trouble and you'll bog down even worse. But I appreciate that you're trying to solve the problem, and certainly there are some good ideas and the government of the day will have to look at them.

Mr McLean: Did you spend all that money, that \$900,000 and some?

Ms Cornish: No, I don't think we did. We were cheap. Listen, I don't think there is another commission that reported on time like us. We were right in there.

The Chair: Ms Cornish, I thank you on behalf of the committee. It's been a pleasure to have you here, and the committee appreciates your time and your contribution.

The committee recessed from 1214 to 1411.

FAIR RENTAL POLICY ORGANIZATION OF ONTARIO

The Chair: I call the afternoon meeting to order, as we continue our review of the Ontario Human Rights Commission. I welcome our first deputation, Mr Philip Dewan, president and chief executive officer of the Fair Rental Policy Organization of Ontario. With Mr Dewan is Robert Herman, the chair of the Fair Rental Policy Organization and president of Robinwood Management. You have someone else with you.

Mr Robert Herman: Yes, Allan Weinbaum from W.J. Realty. He's on the board of Fair Rental as well.

The Chair: Please proceed, and then whatever time is left, we will rotate among the three caucuses for questions.

Mr Herman: Thank you for the opportunity to appear before the committee. In the effort to make my speech a little briefer than I had written it, I'll skip over a few parts.

As the largest landlord association in the province, Fair Rental represents owners and managers of rental property, ranging from individuals with a single unit or duplex to large corporations with many thousands of apartments in their portfolios. Needless to say, our diverse membership has had many dealings with the Ontario Human Rights Commission on a whole range of issues.

The organization itself has also intervened in past commission initiatives and is closely involved with a board of inquiry under the code which is scheduled to proceed this summer. I do not intend to dwell today on the specifics of the latter case, but rather to make a number of general observations about landlords' experiences with the commission.

First, I should say that almost all the concerns we hear

from landlords arise in the context of constructive discrimination claims under section 11 of the Human Rights Code. With respect to claims of direct discrimination, such as an alleged refusal by a landlord to rent on the basis of an applicant's colour, race, sex etc, it would seem that our members generally do not have any difficulty in disproving those claims. Of course, where anyone is discriminating in such a way, then the members of the landlord community would have no sympathy whatsoever.

Constructive discrimination is a much different issue than direct discrimination. In a case of alleged constructive discrimination, the rules are never clear. A landlord who refuses to rent to a couple because they are Chinese or Jewish or have children is clearly guilty of an offence. But discrimination by a landlord who turns down a prospective tenant because of the applicant's terrible credit history or who financially cannot afford to comply with a handicapped tenant's request to install an elevator in a 50-year-old building is a much less clear issue.

The lack of clarity in such circumstances is a big problem for landlords, as for other providers of services. As you will hear from some of the examples I'll cite, the procedures used by the commission contribute in no small measure to this problem, but in fairness to the commission, the root cause probably lies with the legislation itself.

Based on the experience in our community, I would say that the commission and the courts do a very good job of protecting against direct discrimination. When it comes to constructive discrimination, though, the issues at hand are essentially political, not judicial. In each instance the tribunal is being asked to render judgements on wide-ranging issues of societal concern without specific direction from the Legislature—and to do so in the context of a single case, or at most a handful of cases, whose circumstances may represent only one facet of the topic.

The result is that a broad public debate of the type that accompanies legislative change is not provided for, input is received from only a narrow segment of society participating in the inquiry and a decision is rendered based on the limited facts of the case, rather than on the full range of considerations which should apply.

This does not have to be the case and, in our view, it should not be. There have been examples in the past where the Legislature debated such issues and developed new legislative provisions; for example, with respect to protection against discrimination on the basis of sexual orientation or the prohibition of adults-only buildings. By dealing with these topics at the legislative level rather than within the Human Rights Commission, the broadest possible public discussion was fostered and an end result was produced which applies equally to our whole society.

In contrast, the quasi-judicial process of the commission results in decisions which only apply to the case or cases at hand, or to other complaints with nearly identical fact situations. This does a disservice to both the members of the affected groups and the individuals or companies who are providing the service. The former must proceed on a case-by-case basis, rather than having a

universally acceptable statute on which they could rely, while the latter are left in a constant state of uncertainty, unsure whether their practices meet the same terms as the previous case.

Take as an example the issue of income criteria, which the board of inquiry will be hearing this summer. The Legislature could have decided that this is an issue which should be debated openly, allowing input from advocacy groups, tenants, landlords, financial institutions, government agencies, non-profits and a host of other parties who potentially could be affected. Full public hearings would be held, efforts would be made to reach interested groups in every region of the province, and the long-term as well as immediate consequences could be thoroughly debated.

Instead, a handful of people debated the issue in the policy branch of the Ontario Human Rights Commission and developed a position virtually in concert with an advocacy organization with whom they dealt with regularly. In September 1992, the commission released a discussion paper on the issue of income criteria in tenant selection. The ostensible purpose of the paper was to serve as the basis for a consultation with landlords, tenants and government representatives. Despite the fact that the paper claimed to present the concerns of landlords and housing suppliers in providing housing on the basis of tenants' ability to pay, no individual landlords or landlord organizations were consulted in the preparation.

The paper was forwarded to three Toronto-based landlord groups one week prior to a meeting date already chosen by the commission. Despite numerous letters from landlords around the province, no further attempt was made to canvass their views.

Needless to say, the single consultation meeting with a few selected groups could hardly be representative of the 140,000 landlords and numerous associated public and private groups throughout the province. The consultation process in this case was a sham. It was readily apparent from the attitude of the policy staff involved that their minds were already made up.

Armed with this one-sided staff report, the commission then referred three cases to a board of inquiry. An enormously expensive hearing will be held, dealing only with the specific circumstances of the case at hand. Aside from one or two groups who may be granted intervenor status, if they can afford to participate, most of the groups which would be concerned about the issue in principle will not be present, and the decision of the board will almost certainly be appealed to the courts by the losing side, meaning that there will be further years of uncertainty and millions of dollars in legal costs before a final determination is rendered.

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What happens in the meantime? Based on the position developed by the small group of policy people with no public input, human rights officers around the province are instructed to proceed as if the commission's interpretation is law. That is our biggest single concern about how the commission functions today: the propensity of officers of the commission to represent themselves as if they have law-making authority.

Dozens of landlords have been told, for instance, that it is against the Human Rights Code to refuse a tenant on the basis of inadequate income. What they have not been told is that this is not written in the law, nor have there been any board of inquiry or court decisions to this effect. It's merely the interpretation of the commission. Certainly the commission has a statutory role to interpret the code and, if they believe a case contravenes that interpretation, to refer the issue to a board of inquiry for determination, but that's a far cry from simply deciding on a position internally and announcing to the world that this is the law and you must obey.

What happens next is even more troubling. In essence, the commission resorts to blackmail to attempt to force compliance with their unsubstantiated interpretation of the law. The landlord respondent has often been told: "If you do not settle the case, we will be recommending that a board of inquiry be struck. It will cost you \$10,000 to \$15,000 to get representation at the board and you will lose, so why not pay the complainant \$2,000 in compensation and provide an apartment as requested and agree to abide by interpretation of the code in the future and everyone will be happy?"

Everyone, that is, except citizens concerned about the proper administration of justice. Yet this tactic is all too successful, for the simple reason that business people are, by necessity, pragmatists. Often, they may decide they cannot afford to fight a case on principle and will take the cheapest solution. Who can blame them? But the Ontario Human Rights Commission should not be using sanctioned extortion as a means to implement a policy for which they have no explicit legislative direction or judicial interpretation.

All this results directly from the fact that the commission is being asked to do something that, in our view, it is ill-equipped to do: to set policy, rather than to enforce and educate. The development of fundamental public policy is a role for the Legislature and not a tribunal, particularly when the policies in question have major ramifications for our economic and social structures.

There are numerous other concerns that have been raised by landlords as a result of the dealings with the commission, some which arise from the same core issue of the policy-setting role with regard to constructive discrimination and others which apply even to direct discrimination complaints.

I'd like to cite an example for you before we open the floor to questions, if you go to page 12 and the heading *A Narrow View of the Real World*.

Both in establishing their policy interpretations and attempting to mediate settlement of complaints, commission staff seem to adopt arbitrary and sometimes quite unreasonable views of what the reality of landlords should be. Two examples may serve to illustrate the point.

At the consultation meeting just described, a policy person sympathized with the landlord concerned about the high cost of evicting a tenant if he or she defaults on the rent. However, she disagreed that landlords need to consider income when screening tenants. Her reaction was that you shouldn't have the right to prejudice a

tenant's likelihood to pay the rent, that all you need to do is get the Landlord and Tenant Act changed to make it easier to evict tenants when they don't pay. I'm sure all the legislators on this committee will be glad to commit their parties to amending the Landlord and Tenant Act to make evictions easier.

A second example concerns a common area of conflict between landlords and the commission: handicapped access to existing buildings. In this case, the landlord, like most, was very sympathetic to the concerns about inadequate access for the disabled to his building, but the reality was that in an older building constructed long before current access guidelines were developed, and where the physical layout made it impossible to install the requested wheelchair access ramp from the underground garage to the elevators because of the low angle such ramps must incorporate, there was simply no room to construct a ramp without blocking the entranceway to the parking structure. Despite the landlord's good intentions, as evidenced by voluntary changes to exterior building entrances and other measures, a ramp in the garage was impractical.

The landlord cooperated with the commission, asked for advice about whom to consult on access issues and was referred to the Barrier-Free Design Centre, which examined the building and agreed the garage ramp was not feasible. Yet after three years of discussion and thousands of dollars in expenditures by the landlord and a report from the investigating officer recommending that the commission not proceed with the case, there has still been no final determination. As a matter of fact, the tenant didn't even have a car.

The commission is so reluctant to give any recognition to some of the physical and financial realities of the world in which we live that these types of issues simply carry on interminably. As landlords, we are certainly not legal experts and we are not in a position to advise on specific measures to correct all these problems. Some of them may merely need a change in internal policies at the commission, while others require going back to the legislation itself. But they all need to be addressed if landlords and the public at large are to be able to know for certain what is legal and what is not, as well as to assure all parties that they can expect balanced evaluation of complaints and timely responses.

Thank you for your consideration. My colleagues and I would be glad to try to answer any questions you may have.

Ms Harrington: You've certainly made a very good report. I thank you for your thoroughness in developing it. You have a real and a genuine concern that is very evident.

What would you recommend to this committee and to the commission in terms of how to deal with this huge problem? I note the word "consultation" in there. It seems to me one thing you are recommending is that consulting is certainly one way of dealing with the real world. You're saying that right now the commission is interpreting it as law and that's the way it is proceeding. Maybe we could back up a little: What would you have recommended to the commission a little before this point

in time about how to deal with this issue?

Mr Philip Dewan: There are a couple of points we'd make. First of all, the consultation as we described certainly was inadequate, and if the commission is looking to establish a policy position and say there has been some sort of public exercise to consider points of view, then it had better do it in an adequate way, just as the Legislature faces the same sort of challenges whenever you're looking at a change in public policy. It's certainly not going to enhance anyone's view of the commission when it goes out and has a single meeting with a group and then says that's been adequate consultation and ignores the rest of the province outside of Toronto.

Ms Harrington: I gathered that's what you were recommending to the commission, but is there anything further you would recommend?

Mr Dewan: In terms of the attitudes of the rent officers doing the investigation, there should be a specific policy directive from the commission to its staff about how to approach these issues when they're going through the attempt to mediate a settlement. We don't think blackmail is really an effective way for the organization to be operating. Certainly explaining the commission's position and that there is a risk to a landlord that it may be referred to a board is quite legitimate. To state that this is the law and they have to do something, which is the way it's been described quite often, is not true, and certainly does a disservice to the commission to have it put forward that way.

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Ms Harrington: I think every one of us here agrees that this question is a very difficult one and there's no easy solution, but there has to be something done.

Mr Allan Weinbaum: I would add that there are more fundamental problems here. I think the reason that a lot of complaints officers are very aggressive in dealing with these issues is because they're overloaded and want to get these files off their desks. One way to do that is to go to each party and hardball them and say, "This is what I am recommending. Take it or else," and in that way you move things along. That happens in a lot of agencies where people are really overburdened, and this has been an ongoing issue within the commission for many years.

But there are also certain problems which cannot be dealt with effectively by the commission: The classic examples are issues which are now dealt with by wage equity and job equity legislation. If you look back in the 1980s, after the code was amended and even before the code was amended, many of the issues now dealt with by that legislation were dealt with on the basis of complaints to the commission. But the problem is that each complainant is different, and if the next complainant is in a different company, he has to start all over again. Eventually these problems were dealt with through the legislative process, and they were dealt with more effectively that way.

The same issue arises in the cases of handicap discrimination. If you talk to members of advocacy organizations for the handicapped, they're not happy using the

complaints process. It can take years to deal with the complaint, and if you resolve the problem in one apartment building or one restaurant, say, you still have to start all over again with the next one. You need that broader approach.

Ms Harrington: You've got a very good point. That's how a lot of things come up, as individual problems, and then finally, when there are enough of them, that's when legislation happens.

You used the word "hardball" with regard to how things operate. We did have the chief of the commission here yesterday, and I'm sure she would emphatically deny that. They have to be a neutral body.

Mr Daniel Waters (Muskoka-Georgian Bay): I can tell you that a number of the members live relatively close to Queen's Park, and I happen to be one of those members. I live in a building about five years old. I have a father who's in a wheelchair, and he can come and visit me; he just can't go to the washroom. I have to bring him in through the garage; there is no access off the street to this building. You were talking about an old building, but what do we do about the buildings being built today that don't meet a code?

Mr Herman: That should be done by lobbying to change the building codes to accommodate handicapped people, which should be done. That's the way buildings should be designed.

Mr Waters: But the code is out there. Unless you take a measuring tape to every door, which they don't do—the plans call for a 32-inch door, but they put in a 30-inch door and the chair won't go through. The entrance door to the unit is 32 inches, but it's the washroom door. Very nice: "Come and visit, but you have to go to another building to go to the washroom." That's an inconvenience, and that hasn't changed.

Mr Curling: I think you were talking about two codes here. Mr Waters is talking about the building code. Someone building this place would try to build it—I don't want to use the word "cheap"—as economically as possible and go towards the building code itself. That's another matter.

The point I want to get at is that we seem to run into this adversarial situation, which will not help us. It won't help the Human Rights Commission and it won't help landlords. I'm quite familiar, Phil will tell you, with all this confrontation between landlords and tenants, and I find it far less confrontational when you sit down and work things out. All this hype going on about landlords and tenants really wasn't there as soon as you sat down and talked.

In your report, I got that it is a confrontational situation. You may have touched on something. If they have a large case load, I'm not saying they rush through all this, but they have to be settled as quickly as possible—it's evident in the justice system with plea bargaining, it's evident all over the place—to get rid of this. This may be quite dangerous in setting up a confrontational situation.

I only have five minutes, so I may not even ask any questions. I may just use my five minutes to say it is a concern that must be addressed.

You have said the issue here is that they assess someone on the basis of their income to see whether they can afford to come into a rental unit. I ask the bank the same thing: Are they going to do the same at the bank? I'm concerned about people with lower income paying high interest, and they are denied any loan. They're making those judgements. That's a capital asset they want to protect. I think a landlord also has to do that—without sounding too much like a Conservative. The fact is that many people have been discriminated against in terms of access to apartments for rent.

Mr Herman: It's really an income problem the government should maybe address through something like a shelter allowance program, so that people have the money to afford to either buy houses or to find rental accommodation. But you certainly can't tell everybody they're entitled to just rent any apartment they feel like. I think there would pretty quickly be articles in the paper about how a landlord rented something to somebody for \$1,000 a month and let's say their income was only \$100 or \$500 a month; then we would be the bad guys for not saying to them, "You shouldn't have rented that." You're protecting the tenants from being overburdened by having to pay too much in rent as well.

I don't think it's a reasonable approach to say you should have to rent to anybody, and once they get in you'll sort out whether they can afford to pay for it.

Mr Curling: I won't touch shelter allowance.

Mr John C. Cleary (Cornwall): I take from your brief that you've been very critical of what's happening. You have start somewhere. If you had your wish, what would be the most important change that would be best for your group?

Mr Herman: We've already demonstrated that we do not discriminate under the normal grounds of the code. Income criteria are completely non-discriminatory. We think it's the fairest way. As long as they can establish that they can afford to pay for the accommodation, that is reasonable, and I think the Human Rights Commission should recognize that fact and not keep harping on this issue at all. I don't think banning income criteria as a way of accepting tenants is reasonable, and I think they should drop the issue. In time, once it's taken through the court system, I think they'll be forced to do so. That would be my recommendation.

Mr McLean: This morning we had Mary Cornish, the task force chair for the report on human rights reform. I asked her a question about this thing in the paper not long ago—Alvin will recall; his name's in there—with regard to people being able to check tenants' earned income. You stated in your brief that they are treating it as if it's already law. You should read today's Hansard of what Mary Cornish had to say about that, because I'm not too clear about exactly what she did say at this time.

But I am very clear that when I asked her a question about recommendation 85, my first question, she said that recommendation was wrong. It doesn't give me much faith in a report chaired by an individual who, when I picked a recommendation at random, she said it was wrong. I wonder how many other recommendations of the 90 recommendations in here are right or wrong. I just

couldn't believe it. I would think that a chair of a committee would at least know what the conclusions and recommendations were. Obviously, she didn't know. I rest my case. I don't know what you're going to do.

1440

Mr Weinbaum: In terms of what we can accomplish today, it wouldn't be helpful to get into those specifics. Just as a general proposition, we're suggesting that a complaints-driven process does not work effectively when dealing with very complicated, more political issues that affect a large group of people. Whether dealing with income criteria or other issues dealt with under section 11 of the code, we're suggesting that as part of the overhaul of the code, which everybody agrees is necessary, different procedures really should be looked at to deal with those issues.

Mr McLean: Have you ever had any advice from the legal clinics around the city or the province? Do they give you any advice?

Mr Weinbaum: I think we understand their position, because they initiate many of the complaints. No, we haven't dealt with them directly, any landlord.

Mr McLean: Would you deal with them indirectly in court when they were representing somebody else? They're paid for by all taxpayers, I believe.

Mr Weinbaum: Sure.

Mr Murdoch: To help Al out, in saving grace for this report, he was concerned that the recommendations hadn't been—he just picked one and they took it out right like that.

The Chair: Were you speaking about Ms Cornish's report?

Mr Murdoch: Yes. Al was concerned about it, the same as these people are. It was done on June 26, 1992, and the government hasn't acted on it. They probably won't act on it anyway, considering the speed they work at, so that report you can set aside and we'll start over again.

Ms Harrington: Is that your position?

Mr Murdoch: That was your position. I just figure the government of the day probably won't get around to doing anything; it's fairly slow.

The Chair: I thank Fair Rental for your appearance before the committee this afternoon.

CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION

The Chair: Our next deputation is the Centre for Equality Rights in Accommodation, CERA. I welcome Mr Bruce Porter, the coordinator.

Mr Bruce Porter: I'm here with Grace Permaul, who's the staff lawyer at CERA.

It may be convenient or inconvenient that we're following the submission of those who were before us, but we do not intend to get into the details of the important case that's going to a board of inquiry in June and July on income criteria as they're applied in the private market, except to say that from our standpoint it's an incredibly important issue.

People on social assistance and other groups who are

supposedly protected in the Human Rights Code have been refused housing for the last decade on the basis that someone decides their income is too low, fairly arbitrarily. From our standpoint, the provisions of the Human Rights Code, particularly for the people we work with, who are primarily low-income, are going to be largely ineffectual if the board were to rule against the complainants, in this case all of whom are clients of CERA. I don't think this is the forum in which to adjudicate that matter, but we did want to go on record: Hopefully, you will appreciate the incredible importance of this issue and that it be fully heard by a board of inquiry.

Back in 1986, there were hearings before the standing committee on administration of justice into amendments to the Human Rights Code and there was an incredible number of very compelling submissions from single mothers and people on social assistance and others who were talking primarily about adults-only apartments and the fact that 16- and 17-year-olds couldn't get into apartments, because those were amendments that had been moved by Evelyn Gigantes and Ruth Grier at the time.

The committee was somewhat shocked to hear from the deputants that discrimination in housing appeared to be incredibly widespread, even on grounds of discrimination which had already been prohibited in the Human Rights Code. Receipt of public assistance had been a prohibited ground since 1981. People were reporting to the committee that it was almost universal among landlords to refuse to rent to people on social assistance, either directly saying they didn't want to rent to people on welfare or constructively saying that they felt their income was too low for them to be able to afford what were actually the most affordable apartments on the market.

The committee was shocked to find that housing discrimination had become as widespread as it was, but perhaps what was more disturbing was that when they looked at the statistics at the Human Rights Commission, it was apparently almost non-existent. Discrimination against people on social assistance constituted the most rarely cited ground of discrimination. There had never been a case that had gone to a board of inquiry on that issue and there were rarely settlements or investigations into this kind of discrimination.

One of the things that became clear, even as the committee unanimously recommended making changes to the Human Rights Code to improve protections in housing, to make adult-only apartments illegal to ensure protections for 16- and 17-year-olds, was that changing the provisions of the code wasn't going to be enough, that there had to be more effective enforcement of human rights in housing. In fact, the committee recommended the development of an advocacy organization that would provide the kind of advice and supportive assistance that particularly low-income people facing discrimination in housing required.

That was how CERA, the Centre for Equality Rights in Accommodation, was born. At first, we were only funded as a small organization starting up to do advo-

cacy, but by 1988-89 we were able to get some funding from the Ministry of Housing to hire a staff lawyer and to start to file complaints with the Human Rights Commission.

In the past, it seemed that we filed somewhere between 75% and 90% of the formal complaints with the Human Rights Commission in the area of housing. That actually is only 5% of our overall case load, because the majority of our cases, 95%, we handle on an informal basis by calling up the landlord and talking about the provisions of the Human Rights Code and seeing whether it can be settled informally.

However, even with that, the complaints we do file in the area of housing—we've got some charts at the end of our brief which might be useful for you to look at. Appendix A is a chart we'll be referring to on what happens to different complaints as they proceed through the system. Appendix E shows the number of complaints we've filed in each year and whether they have been investigated; you can see that in 1989 we filed 29 complaints with the commission, but by 1990 we were filing over 60, and that's been generally constant from then on.

We're actually the largest user group of the Human Rights Commission. Because we're relatively young, we don't have some of the really old complaints that an organization like the Advocacy Resource Centre for the Handicapped would have, but we have a fairly wide range, so we thought it would be useful for you to look at some of the data we've been able to get together on the kinds of delays experienced at different stages and the outcome and so on.

CERA has attempted to develop what we call a community-based model of human rights enforcement, and that's really what we're here to plug today, as a different way of approaching the enforcement of human rights which we think is more efficient, could save the government a lot of money and which could also mean much better human rights enforcement in Ontario.

We want to make human rights accessible. We want to make them accountable to the rights claimants. We want to make human rights claims empowering for those who are usually silenced and marginalized. We want to make them effective so that they would provide a timely and appropriate remedy and prevent further discrimination from occurring. Perhaps most important, we want the system to be efficient so that we get the maximum from the available resources.

What we are going to suggest today is that the existing system of human rights enforcement is the opposite of all of these, that it makes human rights inaccessible, unaccountable, disempowering, ineffective and inefficient.

We're not here, however, primarily to criticize the staff or the operation of the Human Rights Commission. As the largest user group of the commission, clearly we have our frustrations, both with the organization and with some of its staff. Commission officers frequently treat CERA's advocacy on behalf of rights claimants as an unwarranted intrusion into their terrain. They're often very biased against claimants. Two years ago, they decided to refuse to accept complaints drafted by CERA and other outside

organizations, and we had to go to court to get an order to force the commission even to accept complaints prepared by CERA, when in fact we thought we were doing them a favour by doing something they didn't seem to have time to do.

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The main preoccupation at the commission these days seems to be what at least one manager has referred to as killing files: getting rid of complaints by any means possible to reduce the backlog. We've included in the appendix some individual voices, to show some of the human dimension to this problem.

But we believe the problems are endemic to the structure and that the structure must be changed. We do not think a tune-up of the commission's engine or new upholstery or even a reorganization from the inside out, as has been proposed by the chief commissioner, is going to do the trick. We need to consider another mode of transportation.

Our primary message today is one which I think you've already heard clearly from a number of sources. It's been heard from the Ombudsman of Ontario on a number of occasions by the Legislature. It was heard from the Cornish task force and from most equality-seeking constituencies during the Cornish task force's consultations last year. The message is: Overhaul the system of human rights enforcement in Ontario, not just the commission.

The Human Rights Commission, in our view, has been set up for failure. It's been given far too many roles to play at the same time. We cannot expect a government bureaucracy to provide good advice to rights claimants and respondents at the same time, initiate and prepare all human rights complaints in the province, investigate these complaints, mediate and settle them, determine whether they warrant a hearing, litigate them before boards and in courts, and control public education and action on all issues of systemic discrimination in the province.

What we are proposing, in line with the Cornish recommendations, is that the commission be focused on what it can do well, while community-based advocacy services like CERA and equality-seeking constituencies be empowered to provide the services we are better at providing. The present system is really based on an outmoded notion of rights and of rights claimants. It's essentially a paternalistic system which appropriates control of the process from the claimant and invests significant powers in a bureaucracy. In no other area of the justice system is there so little control by the person whose rights are infringed.

Imagine, for example, if the landlords who just appeared before you wanted to evict a tenant who had made too much noise and they had to submit a complaint to some kind of government commission and wait for four years to find out if the commission deemed the case worthy of proceeding to court. The legislators would never consider such a system, yet that is precisely what a woman who is being sexually harassed by a landlord must do. She is precluded by law from taking her human rights claim to court or to a tribunal on her own. She must simply submit her complaint to the commission and

await their investigation and their decision about the merits of the complaint. She has no avenue of appeal if the commission decides against her.

We suggest that Ontario has moved beyond the time when it was considered appropriate for equality seekers to hand over control of their rights claims to a government bureaucracy and wait years to see if they will be deemed worthy of receiving a hearing. Equality-seeking groups are quite capable of identifying important systemic barriers and taking their own equality issues forward, if only they are provided with the resources needed at the community level.

Equality seekers need access to prompt and fair hearings. They need resources to take their own cases forward and advocacy services whose role is clearly supportive. It is simply not appropriate for a bureaucracy which has the authority to extinguish someone's rights by dismissing a complaint to be put in charge of preparing that person's originating document and compiling the evidence in its favour.

The confusion of roles at the commission often amounts to a blatant conflict of interest. Where officers do not agree with a complaint they will sometimes prepare it so as to make dismissal easy. Pressure to settle a complaint is often disguised as helpful legal advice about what remedy is appropriate.

Our human rights enforcement system, which is supposed to promote equality for disadvantaged groups, actually perpetuates inequality in its very structure. We've relegated equality-seeking groups to a second-class system of justice. New management plans or restructuring will not change the fundamental injustice of a paternalistic system which denies equality seekers control over their own rights claims and, more often than not, denies them a fair and open hearing.

Because CERA only began filing formal complaints in 1988-89, we don't have data on ancient complaints, but we have the largest database. In appendix A, you'll find a diagram of the various stages that complaints have to go through and our calculation of the average amount of time different stages take. We should point out that the average times are going to be underestimated in this calculation because we can't include in the averages the cases that haven't even got to that stage; if there's something that hasn't been investigated, we can't include that information.

You should also note that if there are any discrepancies between this information and information you received from the commission, in many cases the commission is including what are called "early settlement initiatives" in its documentation of complaints received. We don't do that in our files. Early settlement initiatives are cases where someone informally contacts the landlord or the respondent and tries to settle it informally. It means a complaint hasn't really been filed with the commission which would mandate the commission to go through a number of steps. This information is on formal complaints which we have filed with the commission.

Ms Permaul is going to take us through some of the stages and look at the causes of the delay at the various stages.

Ms Grace Permaul: With respect to the structure of the commission, it becomes apparent that there is a dysfunction or malfunctioning at the particular stages, and we can start with the stage of investigation.

Investigation has been completed in fewer than one quarter of the formal complaints filed through our office with the commission. Of those in which the investigation has been completed, the average time for the investigation has been 28 months. If you turn to appendix A you will see the amount of time that passes at each stage. Clearly, that is an intolerable length of time if you are in need of housing or living with sexual or racial harassment. The very nature of the harassment suffered and also the absence of a possible remedy exacerbate the importance of a timely resolution.

What is particularly frustrating about delays in investigation is that in most cases the investigation by the commission accomplishes nothing. Often it simply creates more work for CERA and eventually for the commission staff.

The normal pattern of an investigation is that the file simply lies dormant for a long time. When a new officer is assigned to the case there will be a flurry of activity, there will be exchanges of correspondence, but the focus will usually be on settlement rather on the investigation itself. In our cases, with every new officer there is a new attempt to put pressure on the complainant into settling and then there's even more correspondence. By the time an investigation does actually occur on a file, housing complainants may have moved away or in many cases it's very difficult for us to track them down to get instructions.

Part of the problem that also continues to exist is that of the relationship with officers. Often there is hostility and resentment of the fact that we are intervening in the process. Not only that, but there's also a prevailing bias. What happens is that as an investigation is conducted, there is more of an attitude that the purpose of the investigation is to assemble a case for the respondent, so the element of neutrality is lost and there is a very obvious element of bias.

After years of waiting, we are finally confronted with a case summary which gives some legitimacy to the respondent's position and which often misunderstands the nature of the allegations in the complaint. This is a direct result once again that if the individual doing the investigation is preparing the case summary and that person does have a bias, that bias is evident in the case summary. Most allegations of constructive discrimination, for example, are investigated as if they were cases of direct discrimination.

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All of this simply creates more work for CERA. Confronted with a deadline of less than three weeks to respond to a case summary, we must then assemble our own evidence in response to the investigator's report. The case summary, however, lists findings but does not identify witnesses. We are unable to determine whether key witnesses were ever interviewed, so we must then duplicate what really becomes a second investigation.

In the majority of cases, the statutory requirement that the commission investigate a complaint simply creates extra work and more delay. Eventually, the claimant and the advocate must do most of the work compiling the evidence in favour of the complainant once again. Yet a delay of years has been created by requiring someone who is not likely to be sympathetic to the complainant and who often does not fully understand it to prepare a report for the commissioners. This person is not sympathetic to the complainant and has a bias towards the respondent, and they prepare the case summary which eventually is what is relied upon by the commissioners in deciding whether to continue with this case.

The Cornish task force proposals would eliminate this waste of resources by allowing claimants to proceed directly to a hearing in cases where they already have their evidence. Requirements for disclosure would ensure that claimants would promptly receive necessary information from respondents which we must now wait years for. Only in certain cases where special investigative powers are required would an investigating officer be assigned to the case.

As we move on, you'll once again see in appendix A that with regard to the commission decision regarding board appointments there is usually another wait or period of 11 months. The commission decision regarding whether to recommend the appointment of a board is the important element in the life of a complaint. If the commission decides not to appoint a board, the complainant's rights are extinguished. CERA must prepare thorough submissions for the commissioners simply to ensure that we get a chance to argue the case at a hearing. At that point, once again we're forced to respond. There's a duplication of time and effort, and there is the necessity for CERA to undertake the preparation of additional submissions.

While we are generally successful in convincing the commissioners to recommend the appointment of a board, it is extremely time-consuming to prepare for this silent hearing. We are given a deadline of 15 days from the mailing of the case summary to prepare our submissions. As you can see, there is a very short time span, a great deal of work and also a great responsibility to ensure that the best case is put forward for the complainant.

The Cornish task force recommendations would eliminate this step by allowing direct access to a hearing. The commission itself has acknowledged that it should no longer play the gatekeeper to determine what cases go to hearings. It is much more expeditious to simply hold a hearing than to expend so many resources in preparing the commission to decide whether a hearing is appropriate.

From that stage we go on, and then once again there's another delay from the commission decision to the time of a hearing. Once the commission decides to recommend a board of inquiry, there is on average a further delay of 12 months before the actual hearing begins.

While all of the other delays in the process are obviously unreasonable and were certainly not intended by the Legislature when it passed the Human Rights Code, this delay is, in our view, clearly contrary to the explicit

provisions of the statute. Subsection 39(1) establishes that the board of inquiry shall commence a hearing within 30 days after the date on which the members were appointed. If you turn to the chart in appendix C, you will see that it is on average 8.5 months between the date of the appointment and the first day of the hearings.

The commission and the board of inquiry office have attempted to circumvent this provision by arranging a conference call among the board and the parties within 30 days of the appointment of the board. The actual hearings dates are then set, often for more than a year later. In our view, this attempt to circumvent the intent of the Legislature would not withstand a court challenge.

I think you're starting to see how the time factor and lag compounds from the time a complaint is filed to when there actually is any type of hearing.

The reason for the delay between the appointment of the board and the actual hearings is the unavailability of commission counsel. Even in cases where CERA staff is doing the bulk of the preparation, we must wait for commission counsel to be available.

Once again, the Cornish task force recommendations would eliminate this requirement that the commission have carriage of all complaints before boards of inquiry, thus saving significant waste of resources and eliminating further unnecessary delay. The commission should have the option of appearing at any board of inquiry but should not have carriage of every human rights complaint.

Settlement prior to completed investigation usually takes about 24 months, and often there is no clear distinction in the current system between the commission's investigative role and the mediating role. Officers do attempt to do both at the same time, and the result is usually that none is done very well or very quickly.

There would seem to be no reason to wait for two years to have a complaint settled prior to investigation. Unfortunately, with the present delays, respondents are well served to simply wait until the complainant is either worn down by the delays or is no longer in need of the accommodation which they were denied. Often, by the time an officer gets around to mediating, it is no longer possible for the complainant to receive a meaningful settlement. People must find another apartment before two years expire. Also problematic is the rate of turnover of apartment buildings. Frequently, an apartment building is sold and the respondent is no longer able to provide a remedy. The Cornish task force recommendations would separate mediation from investigation and have it available as an immediate resolution, thus avoiding unnecessary delay and confusion.

Settlements after investigation take on average 39 months. A respondent who knows how to manage the system will rarely settle until an investigation is complete. Settlement discussion will often become serious only when it appears likely that the commission will recommend a hearing or when a hearing has already been set. By this time, the complainant will be unlikely to get an effective remedy. An as-of-right hearing, as proposed by Cornish, would provide an immediate incentive to settlement and thus eliminate this unnecessary delay.

Board hearings: At the present time, we do not yet have enough completed hearings to provide meaningful data on the length of the hearings, but it is clear to us that there are also unnecessary delays at this stage. Boards do not have enough control over hearings, and either unrepresented respondents or well-financed counsel can drag a hearing on intolerably. Often hearings are delayed because of improper disclosure or inadequate investigation. After years of delay, it is difficult to preserve evidence and to track down crucial witnesses. Preparation takes far longer than it would have if the case had proceeded directly to a hearing, and this could have happened years earlier.

The Cornish recommendations would provide for an initial hearing to ensure that disclosure has taken place and to determine what witnesses will be called and how long the hearing will take. The tribunal would be structured so as to discourage lengthy legal disputes and would be accessible to non-lawyers.

You've heard that there has been a great deal, and the commission admits that there has been a great deal, of pressure to deal with the backlog. As a result of that pressure, there have been negative effects. We've listed what some of those negative effects are at the different stages.

In trying to reduce the backlog, the commission has been forced to streamline the process and in so doing actively pursue the permanent closure of files. This has required that the commission earmark additional expenditures of funds, time and human resources. Often, the commission's mandate to promote public policy and to enforce the right to be free from discrimination has been sidelined. There has been little opportunity to consider the ramifications and the possible harm that result from this focus on eliminating complaints.

As you look at this list, you can see the different stages. Once complaints are filed, complainants are discouraged from filing formal complaints even if such a complaint would be warranted. Complaints of an innovative or more complex nature or which do not involve direct discrimination are discouraged. Claimants are often encouraged to accept minimal settlements which are the result of an early settlement initiative even though the settlement does not adequately compensate the claimant for the harm suffered. Claimants are encouraged to forgo public interest remedies, which may deter respondents from settling before a complaint is filed. In such cases, things like having a change in the policy, things like monitoring a policy, all of the public policy considerations and public education considerations are lost, simply to ensure that a complaint is settled in a quick and efficient manner—well, not efficient, but very quickly.

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At the investigative stage, years may pass before the complaint becomes active, yet the commission imposes a 10-day deadline for a complainant to be located and to respond before the complaint is declared abandoned or closed. Often complainants in housing are homeless or without telephones for periods of time and are rarely at the address provided when they filed the complaint.

Less time is put into investigation. Witnesses not

available at a particular time may not be interviewed. Once again, there is bias in favour of killing files. This often means there's bias against the complainant. A greater burden of proof is placed on the complainant to establish that they do in fact have a valid complaint.

Inflexible cutoff points mean that where there's further evidence, that evidence is often not considered. More complex issues of constructive and systemic discrimination tend to be ignored in order to save time. There's not enough time set aside to properly train officers to undertake investigations in specific areas such as housing. There's a bias against weaker complaints and an assumption that only a perfect tenant could have a sustainable human rights complaint. Advocates for complainants are resented because they are seen to be intruding into the process and causing delays.

Then you get to the stage where there are possible settlements. As you can see from some of the items we've listed, the settlements are not often reflective of what is necessary in the eyes of the complainant to adequately remedy the harm that has been suffered. Low-income complainants such as social assistance recipients are unlikely to get any monetary award at all. The commission is often willing to forfeit the larger societal benefits in settlement negotiations in an attempt to get the respondent to sign on the dotted line.

There seems to be a quick-fix approach, where remedies usually fail to serve as a deterrent for future infractions of the code and, once again, public education and awareness issues are ignored. Officers will frequently intervene in the negotiation process and advocate, actually advocate, for minimal settlement offers on behalf of respondents. Claimants are told that if they do not accept settlement offers preferred by the investigating officer, the officer will recommend to the commission that the complaint not be referred to a board.

There's also pressure on staff to close files indirectly, and as a result, this encourages them to violate the complainant's right to representation.

The Chair: Excuse me, Ms Permaul, are you going to be very much longer?

Ms Permaul: No. In fact, I'm finished.

The Chair: You have used your 30 minutes, but if you've only got a few more sentences or a paragraph, please complete it.

Mr Porter: I was going to do the wrapup, so maybe I can take it from there.

Essentially, our main point is that we're stuck in a kind of catch-22 where, if the commission is encouraged to eliminate the backlog, we find fairly unacceptable abuses of power. If they don't eliminate the backlog, we have all these incredible delays which really mean you don't get any kind of effective remedy. We don't think the solution is to tinker with the system but to really make a wholesale change. We think the Cornish task force was the best kind of review of human rights enforcement that's been done in any jurisdiction for a long time. It was done in a short time frame, and I know there were a few mistakes in the final production of the document, but I don't think that should be held against the very important recommen-

dations that are a part of it.

The cost of failing to act is immense. Just in the area of housing alone, the amount of money this government is losing because people on social assistance, for example, are denied access, according to a recent study, to 90% of affordable apartment units in Metro—you can imagine that means they end up having to pay substantially more for less adequate accommodation, and that comes out of the shelter allowance within social assistance. To be worried about spending a few extra dollars on enforcement of human rights and to then suffer the consequences of these much greater costs is simply irrational.

Also, we don't think it is going to cost more. The proposal that Mary Cornish and the task force made is to eliminate inefficiencies. The government could actually move in the direction of devolving some of the current responsibilities of the commission to community-based organizations, and we could do it cheaper and more effectively. Let the different organizations do what they can do well and we think we would actually have a much more efficient and cost-effective system. Thanks very much.

The Chair: We're out of time for this deputation. I'm looking for direction from the committee. Our next deputation, from the Canadian Council of United Steelworkers of America, is not here. Does the committee wish to take five minutes each to ask questions? The deputation's been 35 minutes at this point.

Mr McLean: I would suggest, Madam Chair, that one question each would probably be appropriate. I would like to know the background of this group.

Mr Sean G. Conway (Renfrew North): This is a very interesting, well-researched paper. We don't have anybody else for the rest of the day, by the look of it, so I don't think we've got great time pressure, and this group has done some very interesting work. They certainly have stimulated me to some questions.

The Chair: How much time per caucus would you like, and I'll conduct the meeting accordingly. Five minutes per caucus? All right.

Mr McLean: I'd like to know the background of your organization. In 1989 you had one or two people on staff; you got some money from the Ministry of Housing to operate. What's your budget and how many people are on staff and what jurisdiction do you work under?

Mr Porter: We cover all of Ontario with a 1-800 line. We have six staff, including two lawyers, and our overall budget is about \$340,000 a year, which we're not always able to meet. We're always struggling to get our funding, but that's what we need for the current staff complement.

Mr McLean: Who approves that budget?

Mr Porter: It comes from various sources, but our main funder at this point is the Ministry of Housing through the community partners program.

Mr McLean: You dwelled a fair bit on "a complainant to receive a meaningful settlement." What is the meaningful settlement you're referring to? Money seems to be what the complainant would be after. Is it if they

can't get an apartment, or what's the background of that meaningful settlement?

Mr Porter: Part of the problem with housing complaints when there's such a lengthy delay is that usually by the time three or four years has elapsed, it's not very meaningful to be offered an apartment in a place where you're no longer living.

But in general in human rights cases, there's a notion that a settlement or an award at a board should put the person back to where they would have been if it weren't for the fact that they were discriminated against, so if costs have been accrued in living in a place that's more expensive and having to pay more for transportation to work and so on, subject to the complainant having made sure they did everything they could to reduce those costs, those would be claimable against the respondent. There is also generally an award for what is called general damages, for the loss of freedom from discrimination and for mental anguish and so on.

Unfortunately, our experience is that in housing cases, especially with low-income people, mental anguish and general damages and even specific damages tend to be ignored, so often it's just an apology. In fact, rarely in settlements negotiated by the Human Rights Commission is any monetary award exchanged, so essentially people go through the long process and get very little at the end of it.

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Mr McLean: You indicate in the brief that the Human Rights Commission did not want to take any more of your cases. Were they directed to take some, and what percentage of their total case load would be cases from your organization?

Mr Porter: There was a move that happened two and a half years ago, when they decided they wouldn't take any complaints from outside organizations, that we, being the largest such organization, challenged it in court and won. The court ordered them to accept complaints from outside organizations. I don't think the commission would stand behind that action now. They are trying to be much more cooperative and collaborative on these things.

The second question is a bit difficult for us to answer. The commission has in past reports blended what they call early settlement initiatives and formal complaints, so we've had to estimate the number of formal complaints it had in housing. In the past, we've estimated that CERA is filing up to 90% of the formal complaints in the area of housing, but when we've checked it more recently there's some confusion about whether that's been the case this year. It may be lower this year or we may not be getting the right data from the commission. We have to check on that.

Mr McLean: You have two lawyers on staff. Why wouldn't 90 days be an appropriate time for you to be able to solve a lot of these disputes?

Mr Porter: That's the kind of system we're actually advocating, that we would be able, on our own, to investigate and prepare for hearings in most of our cases within a relatively short time if we had the resources available. We're swamped with work at the moment, but

we've never created any delays ourselves. We always go to hearings as soon as the commission is ready. The delays at the moment are that we have to wait for commission counsel to be free, often to play a fairly minor role in the hearing really, because CERA counsel will actually do most of the preparation.

Mr McLean: It appears to me that you're doing a lot of the work for the commission.

Mr Porter: And we're doing it pretty cost-efficiently as well.

Mr Murdoch: You're organized basically out of Toronto. What is your case load here compared to the rest of Ontario?

Mr Porter: Last year it was just over half in Metro Toronto. Prior to that we managed to have the majority of cases from outside of Toronto. We're looking at the possibility of seeing whether we could provide more effective regional service, but still a major chunk of our cases are Toronto.

Ms Harrington: I'm very glad you explained to Mr McLean what an effective organization you are. I'd like to commend you. You mentioned also that in 95% of the cases you deal directly with the landlord and have them resolved. Is that what you said at the outset?

Mr Porter: Only 5% of our cases would result in a formal complaint to the commission.

Ms Harrington: Very good. I want to address what you said with regard to bias as opposed to neutrality of the commission. You said the bias was to the respondent; we've heard earlier that the bias was the other way. But we did hear yesterday from Ms Brown from the commission that the whole point of the organization is to be neutral. That responsibility rests on her shoulders and she very clearly is taking that responsibility, from what she said to us.

I am concerned also about the statement you made about killing files. Obviously, that is not the way this organization should be working. You said the problems are endemic to the structure and you are therefore recommending the recommendations of the Cornish report.

Yesterday we received the speech from the chief of the commission, and it is available to you today, about what she has been doing over the last while. In it she made eight strategies for change. I'm wondering if you are aware of those and if you believe those changes she is making are helping.

Mr Porter: We're aware of them, although we don't understand all the details and the meaning of some of the words, but we have to say that a lot of it sounds good. We have a lot of respect for Ms Brown and we've had respect for previous chief commissioners, and we've had a lot of support for our work from the commissioner's office. There are a lot of good things people are trying to have happen at the commission, and certainly we applaud what Ms Brown is attempting to do.

Our feeling, though, is that while there are going to be ebbs and flows in terms of the commission working better or worse at different times, our main experience is not with the chief commissioner's office but with officers

who are the same this year as they were last year. They're getting different kinds of instructions, and what we were attempting to suggest in our presentation is that, whatever instructions they're getting, there are problems with the structure itself. If they're getting instructions to try to move things along faster, then they tend to become a bit hostile to the complainant, because if we're suggesting that a larger settlement is appropriate, from their standpoint we're preventing this thing from settling. That's when the bias tends to shift towards the respondent.

Ms Harrington: I'm hoping the commission will be very aware of some of the things you are saying and address those.

Mr Porter: We have met with Ms Brown and have conveyed our concerns to her. We would hope this government would look seriously at the kinds of structural changes that were proposed by the Cornish task force and not place its hopes in new management strategies.

Ms Harrington: That's what this committee has been charged to look at, I believe.

Ms Permaul: I certainly applaud the good intentions of the commission, but some of the proposals—such as better quality assurance, focus on customer service, new branches, a public policy branch—tend to seem only to window-dress and try to react to the criticisms that have come about with respect to the commission. They don't actually deal with the day-to-day realities, with how complaints are filed and how they're handled.

Through our office we handle initial complaints at every stage, so we see the reaction of each person: the intake officer, the human rights officer who's assigned to the file, the person who is assigned to investigate the file, and ultimately the lawyer who's going to represent the commission.

Having seen all of that, it's possible to say it's the structure which is at fault, right at the root of the problem. One instance of that, being bias, is that if you are in a situation where you're being told you should try to settle a complaint, that that is one of your objectives, and you've got a respondent and a complainant who have a different focus or a different objective, and where part of what a complainant is seeking—and there was mention earlier of, what is an appropriate remedy?—is not just monetary damages but a systemic change in terms of change of policy, in terms of ensuring that the Human Rights Code cards are posted, in terms of getting a letter of apology and some assurance that this is not going to happen to someone else, there's a great reluctance for the commission to support that because that prolongs the process.

There are very few landlords who are willing to admit any liability. In fact, the way the system works now, they do not have to admit liability. The pro forma letters of apology simply deal with the fact that the incident may have happened and it may have been a misunderstanding.

But where dignity has been violated, the complainant is dealing not only with resolving their own complaint but trying to seek change for the future. I think that's

something we should be concerned with, because if we're able to change the system, that means there will be fewer complaints in the future and that means a reduction in cost and expenditure.

Mr Conway: I want to thank the submitters for a very well-documented and I think quite provocative and useful set of proposals—provocative, Ms Permaul, in the light of your last exchange with Ms Harrington. My sense of the world—I have spent a long time in search of unbiased, neutral, antiseptic Solomons and, gee whiz, the longer I search, the more frustrated I become. I'm really keen to find these unbiased—I've never met an unbiased person in my life. In the human rights business, I've met some of the most actively engaged people, on all sides, that I've ever met anywhere.

Over the lunch-hour I called a friend of mine who actually does some practising in this business. She's a young lawyer who is quite a progressive individual. I won't even regale you with her stories about the world that none of us sees, which is at those boards of inquiries or in subsequent appeal processes. I can't and don't want to believe what she tells me. Granted, it's just anecdotal, but the little list of horror stories I got over the noonhour just makes me despair entirely.

I think you make a very clear case that there is all kinds of injustice out there, and I don't dispute that at all. I was in fact reminded, and just saying to my colleague Curling, that in the Toronto press this week were the stories of West Lodge.

The Chair: You mean Mr Curling?

Mr Conway: Mr Curling, absolutely. Did I say "my colleague Curling"? My colleague Mr Curling; I apologize.

I remember reading that story in the papers about the various complaints around West Lodge. I suspect there was a lot more there than I read, and it seemed that there was just a good fight on all sides. We had tenants who seemed to have a very legitimate grievance. We had landlords who I thought certainly had some explaining to do. We had city officials who had another story to tell. I'm trying to imagine a set of processes where we're going to get some justice. I must say I'm not at all confident that your remedy to the problems you eloquently identify is in fact going to be the remedy that you hope and pray it will be.

Ms Permaul: First of all, I think you're right that bias exists everywhere and certainly everyone brings his own opinions, as do judges have biases. The emphasis is on the role we are asked to play, and certainly the role that has been assigned to the commission is to be a neutral arbitrator. You're quite right. You're making exactly the point we're making: It's almost an impossible standard to hold, at the level and at the points in the complaints process, that we're asking the commission to be a neutral arbitrator. So why then not adopt the Cornish task force recommendations whereby all parties would have the right to advocate on their own behalf at a hearing?

Mr Conway: Maybe that's the direction we have to go since everybody's telling us that what we've got isn't working very well, and there's no doubt that what we've

got was developed in a pre-charter age and all of that. But as I listen to you highlight a number of your experiences and your complaints, the more we move to the kind of model you imagine, I just would expect everybody out there to simply work to rule and things will become so litigious that it is simply going to grind down.

I remember in the world of education, where we set up a number of informal practices that were well intentioned. They were quickly overtaken by the legal community for all kinds of good reasons, often because we had proponents who just could not or would not accept a verdict. What was supposed to be a user-friendly, relatively low-cost, timely adjudication of complaints around things like special education just became hopelessly expensive and never-ending processes that have now become a complete farce relative to what was expected for them in the beginning.

As I hear you outline an alternative process for which we would all I think have a great deal of hope, I just

can't imagine in this world of the 1990s why that won't simply become a grand work-to-rule that has everybody lying down, having to be dragged through every conceivable legal and quasi-legal hoop you could imagine. If what we've got now is bad, this medicine may turn out to be as bad or worse.

The Chair: Unless you would like to make a brief response, we have used up a lot of time on this deputation, and we did agree to five minutes per caucus. No? Thank you, Mr Porter and Ms Permaul, for your appearance before the committee this afternoon.

Our next deputation apparently is not able to be here. They were scheduled to be here at 3 o'clock and it's now almost 25 to 4. I will take direction from the committee whether you wish to adjourn the committee.

Mr McLean: Adjourn.

The Chair: I remind you that we start at 10 o'clock tomorrow morning.

The committee adjourned at 1535.

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Abel, Donald (Wentworth North/-Nord ND) for Mr Mammoliti
Conway, Sean G. (Renfrew North/-Nord L) for Mr Bradley
Fletcher, Derek (Guelph ND) for Mr Marchese
Murdoch, Bill (Grey-Owen Sound PC) for Mrs Witmer

Clerk / Greffière: Mellor, Lynn

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government agencies

Ontario Human Rights Commission

Chair: Margaret Marland
Clerk: Lynn Mellor

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Troisième session, 35^e législature

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Commission ontarienne
des droits de la personne

Présidente : Margaret Marland
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 3 February 1994

The committee met at 1009 in the Trent Room, Macdonald Block, Toronto.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mrs Margaret Marland): Good morning. I call this meeting of the standing committee on government agencies to order, and we will continue to review the Ontario Human Rights Commission.

Just before we do that, we need to resolve one administrative matter. Our last deputation yesterday afternoon was to be Brian Shell from the United Steelworkers, Canadian council. As you recall, Mr Shell arrived at about 20 to 4 yesterday; he had been scheduled for 3 o'clock. He would like to be rescheduled, and we have about three options. The deputations for this afternoon have all cancelled.

Mr Alvin Curling (Scarborough North): How many were there?

Clerk of the Committee (Ms Lynn Mellor): There was one, the CAW at 2 o'clock; they cancelled. A presentation from Dr Ubale was scheduled for 2:30; he's been moved to 11:30.

The Chair: We could see Mr Shell at noon today, or you could take your normal noon-time break, if you have commitments, and come back see him at 2 today, or you could see him on Monday.

Mr Allan K. McLean (Simcoe East): Let's deal with it at noon.

The Chair: Is there consensus? All right, we'll see him at noon today.

Mr Curling: Was there any reason the CAW cancelled?

Clerk of the Committee: No.

Mr Curling: No reason at all?

Clerk of the Committee: Nothing.

Mr Curling: I'm surprised the unions do not want to actively participate.

MARY EBERTS

The Chair: I welcome Ms Mary Eberts to the committee. I'm sorry we've kept you waiting a few minutes. There's half an hour for your presentation, to use however you wish. If you'd like to leave time for questions from the committee members, that's in order as well.

Ms Mary Eberts: I will certainly be able to do that. I don't have a written presentation, for which I apologize. I was a little over my limit with work and didn't have time to prepare written remarks, but I hope you'll have them on tape in any event.

You probably know me, at least by reputation, if not personally. However, let me detail for you the experience I've had with this commission and others so that you know a bit about the perspective from which I speak.

Before the Ontario Human Rights Commission, I have represented both complainants and respondents. Long

ago, when I was a law professor, I also acted as a board of inquiry for the commission, and I have been involved in judicial review applications both on the side of the commission and also against the commission. My practice includes judicial review matters in human rights at the level of the Canadian Human Rights Commission, the federal government, and also in some other provinces, Alberta and the Yukon being two that I can think of. I also have had some experience with New Brunswick and Quebec.

I am an aficionado of human rights law, with a varied perspective to bring you today. I have practised and worked and taught in the human rights area for 20 years now, and one of the first messages I wish to make to you is that over that time, I have seen the scope of human rights legislation increase considerably. More and more grounds of complaint have been added, the legislation has been refined, and the burden on human rights commissions has increased proportionately.

Public expectations of human rights commissions have risen, both because of the general social climate and also because of the nature of the legislation, and the resources that have been provided to the Human Rights Commission in Ontario to answer the legitimately rising expectations of the Ontario public have not kept pace with the statutory mandate, which has been continuing to expand.

The Human Rights Commission has faced, particularly since the last major amendments in 1981, an increased scope of activity as more and more grounds are being added, and a decreased financial ability to deal with the complaints that have come in. This has placed the commission in a virtually impossible situation. The commission has struggled to keep up with the processing of complaints, which is its main business, and it has not been able to take the proactive steps which might well forestall the need to have extensive processing of complaints.

For example, there are very few large, class action type of prosecutions or actions being initiated by the commission. The few that have been, like the large investigation into the retail grocery business, have foundered because of the delay caused by lack of resources. If the commission had the resources to take on, as it can under its statute, inquiries in some key areas of the economy, then it might be that necessary structural change could be accomplished and it would no longer have to groan under an increasing case load from that area.

Similarly, the commission has been unable to regulate by means of policy statements and publicizing policy statements and doing the necessary groundwork and the bringing of industry on side for those policy statements that it could do if it had more resources.

I've often thought that the commission could well spend considerable time and make a considerable investment approaching industry groups, sector by sector, and

trying to bring them more on side and get them actually to take more responsibility for enforcing the act, but in a situation where it's simply moving reactively to deal with a huge case load, I don't think it has been able to do as well as it needs to do in that area.

Because of the increasing scope for the commission brought about by the important amendments of 1981 and the resources that haven't kept pace with that, what I have noticed as a litigator over the years is that the Human Rights Commission is faring worse and worse in the court.

When the Human Rights Commission is taken to the Divisional Court on judicial review applications, whether it's by a complainant or by a respondent, now the Divisional Court is ready for the Human Rights Commission and the commission faces enormous hostility from the bench, because the judges have seen, over the past three or four years particularly, a number of cases in which long delays and absence of procedural fairness in investigations have been featured. I can tell you, from having been an observer of this scene for some time, that the nature of the procedural injustice and the nature of the delay that the Divisional Court is now seeing is really, in some cases, quite shocking.

As a result, the Divisional Court has a very negative attitude towards the Human Rights Commission. I contrast this with the situation even three or four years ago, when I was involved in some judicial review applications against the commission, and the Divisional Court was quite prepared to say: "Well, they may have been a little unfair, they may have missed a procedural step here and there, but look, the outcome was basically fair, and we're going to give them the benefit of the doubt."

What the court has been seeing, because of the initiative taken by unhappy customers of the commission in the past three to five years, has really turned its attitude around completely. I feel sorry now for the counsel who go to court on behalf of the Human Rights Commission because they often have a very uphill battle and they are not treated really that well by the court.

I'm always very saddened to see this. I think it's a measure of the stress the commission has been under, because even though the court is now very impatient with the Human Rights Commission, courts generally speaking are very high on the goals of human rights legislation. What you have is a set of courts that are more than predisposed to further the goals of human rights, human dignity and equality and which have expressed that sentiment and that predisposition in a whole series of landmark cases, being faced with the reality of the day-to-day administration of the commission and really throwing up their hands in despair.

1020

That case study of what has been happening to the commission in the courts is instructive. I wish the commission had the resources to turn it around and stop those cases going up to the courts, because I think in the long run we will see the negative attitude towards the commission's process start to creep into the attitude the court has about human rights in general. I'm concerned

about that. I've seen enough of these cases over the past few years to assure you that my concern is not just based on an isolated example or two.

I'm sort of a professional complainer about the Human Rights Commission myself, I have to tell you that, but if pressed—and I consider myself not pressed, but at least invited today to offer some conclusory observations on where I think the commission should go, what you might usefully say about it—my bottom-line observation about the commission is that the people who are there, both as the order-in-council appointees and the paid staff, are by and large very dedicated and very knowledgeable. With very, very few isolated exceptions, I have a great deal of respect for the people I have been dealing with at the commission over the years in their various roles.

I think they have suffered from the high turnover and low morale that is endemic in an organization that does not have enough resources to do a huge and important job. Quite a lot of the difficulties that have come to my attention, like delay and unfair process in investigations, could be solved if there were the resources available just to pay more attention to the administrative side of things.

The Human Rights Commission is more needed now than ever, and I am sorry its recent difficulties have put it in the unfavourable light it has been seen in, at least in the past couple of years. As a person who practises in the area of human rights, employment equality, I have myself seen over the past year and a half or two years enormous backlash in the marketplace and in society against equality seekers.

I see daily in my practice stark examples of employers who are simply not obeying the law. They know what the law is, they are not surprised when you draw it to their attention, but they say: "Oh, that doesn't apply here. We don't have to obey that." You ask them why, and they'll give you mysterious excuses like "That employee wasn't productive" or "I invested all that training in that employee and she turned around and got pregnant so I don't have to worry about her any more." They have all kinds of reasons they give you that seem like good reasons to them for simply ignoring the law.

I was interested to see Madam Justice Wilson, in her report for the Canadian Bar Association on women in the legal profession, which encompassed not only the situation of women but also of visible minorities and other minority groups in the legal profession, saying quite bluntly that the legal profession itself is one area of the economy which simply does not obey the law with respect to its employees. If the feeling that one can ignore human rights and equality law has become well established in the legal profession itself, you can imagine what it's like in other sectors of the economy, so I would say that the worst thing that could happen right now is any diminution in the respect and the resources accorded the Human Rights Commission. This is the time for it to have more resources, to be shored up, to be strengthened to deal with both the rising expectations on the part of the equality-seeking groups and also the downturn in attitudes in the marketplace.

I believe, however, that those resources and that strengthening need to be attended to in the context of a

recognition that there are now more pieces of equality legislation on the books than there even in 1981 when the last major overhaul of the Human Rights Commission legislation was done; for example, the pay equity law and the unemployment equity provisions.

There is a certain amount of overlap between the business of the Pay Equity Commission, the employment equity administration and the Human Rights Commission, and I think it would be very useful if some coordination among the three could be effected so the resources dedicated to this important equality-seeking function by the province were not expended in duplication, and so the people who have to deal with the three agencies, whether they be equality-seeking customers or respondents to complaints or applications, will know more clearly where they stand and will have a fairly comprehensible set of obligations and administrative steps to go through.

Those are my observations and my recommendations, and I will stop here if you've questions or comments.

Mr Curling: Thank you for coming in. I know of your contribution in human rights issues. It's shocking to hear you say that human rights cases are faring worse, if I hear you correctly, in the courts. We have quite a challenge in demographics now as we change the diversity in our population, and it more or less demands we pay more attention to people's human rights and define what human rights are, really.

One of the things you talk about is resources, and I'll take a different twist on that. You're not alone when you say that some of the people handling human rights cases are not competent; I think I was hearing that. Some people came before us here and talked about lawyers taking human rights cases who are not really qualified to do those cases, and also that prosecutors aren't quite informed about human rights and not knowledgeable. So what happens is that for those people bringing forth the human rights cases, justice was not done for them. It gets down to who has the best lawyer and whether the prosecutor was relevant. It's rather saddening—because that's what it is all about—to say justice has not been done.

Is that your observation too? What would be your recommendation in how a selection of a lawyer should be made in human rights cases? Do you think there should be something special done in that regard?

Ms Eberts: You mean by the commission itself?

Mr Curling: In general; I'm going outside the commission. I presume the commission can make recommendations, because as you said, if the cases are settled within the commission, it doesn't need to go through the courts. But you still find people who want that access who say, regardless of Human Rights, "If I have to wait in line three or four years just to be told whether or not I have a case, and even if I have a case, after three years the evidence is so"—

Ms Eberts: That's right. In my experience, there are two different situations. When you first bring a complaint to the Human Rights Commission you're dealing with people at the officer level. The people at the officer level, the investigators or the officers, are usually not lawyers, and there is a great deal of variety in their ability to

conduct an investigation in a timely manner that affords due process to the people being investigated. Some of them are excellent. Some of them are not experienced. Some of them don't stay with the commission long, so you find files that have been through the hands of three or four different officers, which always adds to the delay. When I say the commission needs more administrative resources, that is particularly one area where those resources should be applied, to the establishment of a uniformly well-qualified investigation officer cadre for the commission.

When you go on to the board of inquiry stage, you find that the staff lawyers at the commission—or sometimes the lawyers from the Ministry of the Attorney General will take the case on behalf of the commission, and sometimes they'll retain an outside counsel, but they do that much less now than they used to. Those lawyers are, generally speaking, certainly up to the task. They tend to be young. Many of them are young, and they've come into the area because of a special interest or a vocation in the human rights area.

1030

Like all young lawyers, I think they would benefit from mentoring by senior lawyers involved at the commission or available to them through the Ministry of the Attorney General and through the opportunity to take enhanced professional training in the litigation area. That is not an observation I make particularly about the counsel for the Human Rights Commission. It's a general observation, that in the first five to six years of a lawyer's training it's important that they get pretty intensive not only experience but also skills training.

Mr Curling: Do you think the government should implement the recommendations from the Cornish report?

Ms Eberts: Generally speaking, I thought those recommendations were very good. A lot of effort went into them.

Mr Curling: Do you feel the commission should be more independent of the government?

Ms Eberts: Oh, yes, I think that would be—

Mr Curling: Reporting to a legislative standing committee?

Ms Eberts: Often the commission deals with complaints against branches of government and government agencies or sectors of the economy where there is special attention being paid by the government, so enhanced independence would be a very good thing.

Mr McLean: Have you heard of the group called the Centre for Equality Rights in Accommodation, CERA?

Ms Eberts: Yes, I have.

Mr McLean: Are you familiar with the work they do?

Ms Eberts: I'm not closely familiar with it. Accommodation is not an area I've worked in.

Mr McLean: They address systemic discrimination in housing. They indicate they are the largest user group of the commission and have approximately 200 unresolved complaints at various points in the system at any one time. I'm wondering if they are part of the overall

concern that's been raised with regard to some of the backlog. You probably wouldn't be familiar with that.

Ms Eberts: I know them only by hearing them discussed by other lawyers. I don't know their work closely.

Mr McLean: There are 80-some recommendations in the Cornish report. When Mary Cornish was here the other day, I raised the issue with regard to recommendation 85. It's just one paragraph I want to read to you, and I'd like to have your comments.

"The commission should adopt a more open, cooperative relationship with community groups and individuals with human rights expertise and allow them to prepare and develop their own claims, and participate in direction of the investigation, settlement and appointment of the board of inquiry."

I asked Mrs Cornish whether she was aware of the concerns that had been raised. What are your comments with regard to the appointment of the board of inquiry from a community group?

Ms Eberts: As to the overall recommendation, I have experience working in a situation that's somewhat similar to that when we did cases through LEAF when I was chairing the national legal committee there. We would attempt to involve community groups that had special knowledge or expertise in an area and found they would be very helpful. They often could provide not only expertise but support to the complainant. There would be useful mediators. It was very valuable to prepare the ground for a settlement working with these people, as well as prepare the community for the ultimate outcome of a case. It does take some particular skills to operate in a situation like that and to avoid being captured by the groups with whom you work, but I believe those skills can be developed.

As far as appointment of the board of inquiry is concerned, I did not actually read that recommendation as stipulating that the group itself should appoint the board of inquiry. I read it as saying they might have input into the appointment of a board of inquiry, and that actually is somewhat reflective of the trend towards greater public input into appointments. Even the Canadian Bar Association recommends that there be greater public input into the appointment of judges. That recommendation actually could be administered in a way that could balance your legitimate concerns for fairness and impartiality with the benefits that type of collaboration could bring you.

Mr McLean: To be fair to Ms Cornish, she didn't agree that the board of inquiry should be part of that recommendation after I had questioned her about it.

You mentioned the criteria to help officers define the case. That's one of your recommendations, that there be more defining of whatever the case may be, that an intake officer could deal with it more quickly.

Ms Eberts: I would like to see the commission generally make more use of policy instruments, articulate more openly what it thinks is a case of this sort or a case of that sort, what the elements of the case are and so on, and make those instruments available to officers. Having made them available to officers, there might be some

greater dispatch in dealing with the case. My concern also would be that those instruments be used to ensure that a case is dealt with fairly right from the beginning, and I think that would help there too.

Mr McLean: There are some recommendations in the report that suggest how the government should act, and it goes from September 1, 1992, to September 30, 1993. Are you aware of anything in this report that has been acted on by the government? I'm not, and I'm wondering if you are.

Ms Eberts: No, I'm not.

Ms Jenny Carter (Peterborough): Perhaps I could pick up on the last point. We had an address from Rosemary Brown at the beginning of these hearings, and she says they are making improvements from the inside out. She listed eight different initiatives they were undertaking which she felt were in compliance with suggestions of the Cornish report. I could list those if you'd be interested.

On the wider front, you said you agree with the Cornish recommendations. One of the problems that has been suggested in relation to those is that they would cost more money. You are suggesting that what the commission needs in any case is more money, more resources. It has also been suggested to me that if some of those Cornish report suggestions were carried through, it would not in the long run cost more, but less. It seems to me that we need to get our ideas straight about what is going to cost the most and what is the best way to spend the money. Maybe you could make some comments on that.

Ms Eberts: I will offer you a quote from a wonderful accountant who was involved in the establishment of LEAF and for many years ran the financial side of LEAF as its chief financial officer. Her observation to us, whenever she was getting us cranked up to go and do fund-raising, was, "Remember, equality doesn't come cheap." We do have to remember that. Certainly as I did those fund-raising breakfasts and lunches and things, that was one of the things that motivated me.

It is acceptable to apply principles of sound financial administration to the administration of a human rights agency and cost out proposals and cost out alternatives and this type of thing. There's absolutely nothing wrong with that. It should be done.

1040

Ms Carter: Obviously, whatever we do, we want to do it as economically as possible. But does the structure of the commission lead to unnecessary work, unnecessary procedural stages which in themselves add to the expense?

Ms Eberts: I'm going to give you an example of an expenditure which looks like an extra expenditure in the short run but may in the long run prove to be more cost-effective: the development of specific and articulated policies about what is acceptable in certain areas and what is not acceptable in certain areas, and then going to employer groups and publicizing those. In the short run, that takes extra money because you need the staff time and you need the PR to go to employers. But if you could get even one sector of the economy to make a

commitment to following through on those, you would have saved money in the long run, because then the sector of the economy that was involved would be more or less self-applying the Human Rights Code. That's certainly one.

Another one is that any measures taken to improve the processing of complaints within the commission may be cost-intensive in the short run, but they will save the commission a lot of those legal bills it's now paying when it gets brought to judicial review. I think we have to look at them in those ways.

Ms Carter: The things Ms Brown listed were: implementing a quality and quantity assurance system; establishing a coherent and meaningful customer service program; streamlining and enhancing enforcement procedures; using technology to be more efficient and productive; creating a lean and rational organizational structure; defining and preserving clear standards of accountability; supporting all staff through relevant and respectful training and development, and apparently they're working very hard on that; and acting decisively to ensure organizational health, including the use of sound anti-racism principles. Do you think that by pushing all these initiatives they could make a real difference?

Ms Eberts: Although these are pretty generic descriptions, they sound good. Certainly, each one taken by itself would be a useful development. If they manage to implement all of them, I think they will be on the way to a healthier commission.

The Chair: Thank you, Ms Eberts, for coming before the committee this morning. We appreciate your contribution very much.

Ms Eberts: Thank you for inviting me.

COUNCIL ON HUMAN RIGHTS
AND RACE RELATIONS

The Chair: Our next deputation this morning is Mr Hasanat Syed, who is president of the Council on Human Rights and Race Relations. Welcome, Mr Syed.

Mr Hasanat Syed: I have a written brief which I will read. This is of a somewhat general nature, not from a professional angle.

I thank the Chair and members of the standing committee for giving me this opportunity to appear on behalf of the Council on Human Rights and Race Relations. Human rights issues and concerns are non-partisan in nature, and I would speak in the same spirit. I hope that the members of the committee, who are drawn from the three parties in the Ontario Legislature, would approach the subject in the same spirit.

The Human Rights Commission in Ontario is a very important and sensitive body and it is in many cases an agency of last resort. This is a body which is also the agency of hope and justice, and to Ontarians who are neither English nor French it is the body to whom they could go for addressing their concerns.

This segment of the population is not small. According to a study done by Dr T. John Samuel, commissioned by the race relations advisory committee on advertising, of which I was the past co-chair, the report says that by

the end of this decade, when we would be entering the second millennium, the projections of the visible minorities are worth noting.

There would be 2.7 million Ontarians of visible minorities, and they would be in excess of 30%. Of these, the largest segment would be Chinese, 1.29 million; south Asians, the second-largest group in Ontario, over 1 million; followed by blacks. Others who would be in excess of half a million each would be west Asians/Arabs, Filipinos and southeast Asians and Latin Americans. It is estimated that Ontarians who are neither English nor French would be 49% of the total population of Ontario by the end of this decade.

I quote these figures at length to highlight the growing importance of racial minorities in Ontario, and the Human Rights Commission is a body which stands up as the custodian of the rights of the less fortunate.

I am aware that all three parties represented on this standing committee hold the cause of racial minorities and visible minorities dear to their hearts to varying degrees. All of them talk and support multiculturalism, but when this is translated in terms of dollars the story is somewhat different.

The quarterly update of Ontario Finances as of September 30, 1993, speaks of about \$50 billion in operating expenses. Of this, \$77 million is budgeted for the Ministry of Citizenship, on whose rolls the Human Rights Commission is borne. The estimates for the briefing book for the Ministry of Citizenship for the year 1993-94 show the estimates at \$13 million against the estimates of 1992-93 of \$15.5 million.

In order to arrive at a percentage, we have an expenditure of fifty thousand million dollars, and of this, \$77 million is spent on the Ministry of Citizenship. That means if Ontario spends \$1,000, only 15 cents are spent on the Ministry of Citizenship, and of these 15 cents only two and a half go for the Human Rights Commission.

I quote these figures at length to show how much importance is attached to a body and an agency which exists for the less fortunate and how little goes to it.

The members of the standing committee have to ponder about it and compare the gap. The political talk, when compared to what actually is on the table, makes dismal reading.

Here I must pay a tribute to Minister Elaine Ziemba for the outstanding leadership she has provided and the way she is handling the affairs of the ministry with 15 cents out of \$1,000. The new chief commissioner of the Human Rights Commission, Rosemary Brown, who took over only six months ago, is probably doing her best to clean the mess.

The figures quoted in the briefing book of the ministry appal me. The inquiries to be received by the commission in 1993-94 are projected at 146,897 and referrals at 32,850. The backlog of complaints is estimated at 1,877 and new cases estimated to be 2,433. There is a growing overload, and the common complaint against the commission is delay, a delay which is frustrating and disappointing.

There are eight part-time commissioners and the load

of cases is growing day by day. How is the commission expected to deliver relief and justice to the aggrieved persons to whom this body represents a tower of hope, but that tower is very much messed up?

It is not surprising that the performance of the staff appointed on the commission has been open to criticism. Not long ago, during the days of the previous government, a former chief commissioner faced media heat for making appointments which went against the very principles for which the Human Rights Commission stands. It is very interesting to see the Toronto Star clubbing the then chief commissioner for making irrational appointments at a time he imposed heavy fines on a firm which refused to hire visible minorities.

This briefing book speaks of the existence of a communication and education unit, saying that the primary goal of this unit is to communicate to the people of Ontario, through media and direct contact, the policies and the practices of the commission as well as the rights and responsibilities contained within the code.

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This unit, when its director was contacted to provide material for the preparation of this brief, failed to provide the material, for obvious reasons. For six weeks I've been trying to see the new chief commissioner, and the person in charge is holding me at bay. I can see the minister, but to see the chief commissioner you have to wait. It is not a reflection on the commissioner but a sad commentary on the staff, a staff that is dead against the social contract. This unit needs to be overhauled and told to serve the needs of the public for which it is created.

Then there is a legal services unit attached to the commission, and it is supposed to tender legal services to the officials of the commission. That is understandable. There is a compelling need to enlarge the area of the operation of this unit. The legal expertise of this should be made available to the people coming to file complaints. If this unit is made a dedicated and well-informed agency of the commission, most of the complaints can be properly guided and assisted, thereby reducing the time of the commission spent on improperly filed complaints.

One of the most important things this standing committee can do is to advise the government that the Human Rights Commission should be equipped with professional facilities to help guide the people who wish to file complaints. It has often come to the notice of the council that the people wishing to file complaints are not sympathetically and properly handled, guided and counselled.

Another recommendation the council would make is to increase the number of commissioners instead of the staff. It is always the tendency of a manager and a director to keep asking for more staff and more help, whereas the real problem is the absence of good and compassionate commissioners. Thanks to Bell Canada, which has provided answering facilities, in nine out of 10 cases when you wish to reach a member of the staff of the government of Ontario, you meet the voice mail or the answering machine.

Mr Sean G. Conway (Renfrew North): Give the man a medal. You are absolutely right.

Mr Syed: This facility should be immediately withdrawn. It tends to make the staff lazy and keep them away from their desks, and a person filing the complaint faces even greater frustration.

The council wishes to lay a great deal of emphasis on the fact that top priority be given to streamlining the Human Rights Commission. Rosemary Brown is the right person to do that, but she needs more funds for the process of easing the case load, not for increasing the staff but to make more facilities available. There is a need for increasing the strength of commissioners, an increase in making facilities available to the people who wish to file complaints, and an urgent need to evolve a process whereby no case in any circumstance should be stretched beyond one year. The postponement of cases for one reason or another not only puts financial strain on the commission but also causes immense disappointment and frustration among the people who've come for redress, who face another bottleneck or another bureaucracy interested more in disposing of the file rather than redressing the agony of a person whose rights have been violated.

Before I close, I once again commend the work of the minister, who with very limited resources has given fine leadership, and also of the new chief commissioner, Rosemary Brown, who we hope will live up to her reputation.

There are a few charts attached to this brief, taken from the study done by Dr Samuel, to support the figures I quoted. I'm open to questions if there are any.

Mr McLean: It was nice to hear a good commonsense approach taken to what you feel are the problems at the Human Rights Commission. You lay them out in fairly good detail, and I appreciate it. Are you aware of the recommendations the Cornish report has brought forward?

Mr Syed: I have heard about them, but I haven't gone through them.

Mr McLean: I wish you would. I wish you would take a look at them and pick out what you think should be the priorities we should be dealing with, as a committee recommending some priorities. Your brief certainly shows that you're well aware of the problems in the commission. Many people will agree with you. I just want to commend you for a great presentation. You've really said it all.

Mr Syed: Thank you.

Mrs Elizabeth Witmer (Waterloo North): You mentioned that you definitely believe they need to get away from the telephone answering style that's presently in place, and I heard Mr Conway agree with you.

Mr Conway: Isn't that the scourge of the entire government? Does anyone not agree with me?

Mrs Witmer: I know myself, when I call in to reach an individual, it takes almost five minutes to finally reach them.

Mr Syed: You're a lucky person, because I'm not an MPP like you. I spend sometimes hours. You would be interested in this. I called a person and that person said, "If you are in urgent need, please call that person." I

dialled that person. There was another voice mail: "I'm so-and-so. If there is a problem, call that person." Now, what are you going to do in that case?

Mrs Witmer: It is a very serious problem. It's an issue the government needs to deal with very quickly, because some of the work we do in our constituency offices is because of the frustration that people can't reach the individual, so they ask us to make the contact. Particularly in this area, we need to make sure there is a real, live person. There need to be steps taken to improve customer relations, and that's something that could happen in all the areas.

Mr Syed: I agree with you.

Mrs Witmer: You're talking about increasing the staffing.

Mr Syed: No, not staff; I'm against this. It's the funding for the commission so that the commission is equipped with more facilities. Currently, if a person goes to court, he can go for legal aid. If the person goes to the commission, there is nothing like that. The person simply has to rely on his or her own resources. The people who go to the commission are largely from my own segment of the population, because they have some grievance. They don't have the resources. If the case goes to the court, he or she can get legal aid, but in this case they can't get anything at all like that. That's the reason I urge that the funding be increased so that the commission may be in a position to help where there is a problem in filing the thing and the people who come to the commission may be assisted professionally.

Mrs Witmer: In essence, that is increasing staffing. Whether it's the commission staffing or somebody else, we're going to be using more people in the process.

Mr Syed: What I was saying is that if you make provision for funding the people who come to the commission to file the complaint so that they can engage a lawyer, which currently they can't, I don't think there is a big necessity of a large—there may be a few, I agree with you, but not necessarily a large number of people to be hired for that specific purpose.

Mrs Witmer: Have you taken a look at the figures Rosemary Brown presented? She feels she's on the right track, and I think she's done an excellent job in a very short time.

Mr Syed: She comes with a reputation. She's certainly a person of high profile, and probably she can do a lot. Personally, I haven't met her. My information is what I have read about her.

Mrs Witmer: I was quite impressed with her presentation the other day, and certainly she instilled confidence that she was prepared and able to deal with the problems, the backlogs.

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Mr Syed: It's a huge thing. I believe the Human Rights Commission is, in a way, a big model for the people who are here coming from outside, the visible minorities, that there is an agency so we can go there and file a complaint. That gives them a little feeling that there is something. If that particular agency is not functioning or for some other reason not giving the results, there is

bound to be a great deal of frustration.

Ms Margaret H. Harrington (Niagara Falls): Thank you for being with us this morning. Sorry I was late. I notice on page 1 you've said, "This is a body which is also the agency of hope and justice." I see it that way as well. I think you have recognized that the commission now has embarked on a process of making some very necessary changes and hopefully vital changes in the organization that will give it new life.

With regard to hope and justice for the future, do you believe there are underlying causes of injustice and discrimination in this province that the commission can somehow address or help focus on?

Mr Syed: There are, obviously, because the complainants mainly are from the less fortunate, from the visible minorities. They go to that commission with the hope that they will get some redress. You indicate that the commission is currently engaged in new initiatives and things like that. Apart from that, I believe there are legitimate grounds for the people feeling frustrated with some of the things they come across in their daily lives. As one gentleman pointed out, there is quite a large number of cases about accommodation and about other things. There is a problem.

Ms Harrington: My concern is that we're dealing with individual cases. Obviously, that's the job of the commission, but if we could get more at the root causes and stop people from feeling free to discriminate, even subtly, if we can get that educational process going and eliminate some of the underlying framework that enables people to think they can discriminate, then there hopefully will be fewer cases.

Mr Syed: I agree with you. You are absolutely right, but who's going to undertake that education?

Ms Harrington: That's what I'm wondering, whether you think it's the role of the commission.

Mr Syed: There is a lot of political talk, but the problem is there is nothing concrete being done. You have identified a very good area, but the problem is, who's going to undertake that education?

My own council is organizing a conference on anti-racism on March 21. That's the whole idea, because I want to bring the people from both segments to one platform so we can talk about the problems of racism in our society.

Ms Harrington: Maybe everyone has to deal with this.

Mr Syed: Everybody, not merely the visible minorities. I believe also that tolerance should be shown not only by the people who are here but even by the people from the visible minorities, because we probably are asking too much sometimes, which is not a correct thing. It's a two-way street. People from the visible minorities, people from the other groups, have to show each other a sense of accommodation, and once there is an appreciation of each other's position, probably there may not be more instances of racism or discrimination.

Ms Harrington: Hopefully we'll have less need for the commission. That would be wonderful.

Ms Carter: You said you thought we should spend more money on the Human Rights Commission. I'm just wondering who it is that we need more of. You suggested we need more commissioners.

Mr Syed: What I was saying is that the money is needed for the people who are coming to file a complaint. When people like us go to the court and they are not capable of mobilizing resources, they can go to legal aid; they get the money. But they cannot get legal aid if they are going to appear before the commission, so the money has to be provided for such people.

I'm not asking to increase the staff. The most you can increase probably is the part-time commissioners. I'm saying at the moment that the commission should be in a position to provide help if necessary—professional, financial, whatever—to the person coming to the commission to file a complaint. That's what is not there. That sometimes deters the complainant from going, how he's going to hire a lawyer. Lawyers are an expensive commodity; you have to pay a lot of fees to them. But if a system of legal aid is brought in, that probably should be administered by the Human Rights Commission.

Mr Conway: I really appreciate your submission. There is a good sense and wisdom about it that I find quite attractive. I'm delighted to hear a citizen come forward and complain, as you have, rather directly about the scourge of voice mail. We won't rethrash that straw, but I really appreciate that.

I'm struck by the fact that someone who is president of the Canada Council on Human Rights and Race Relations has still not had a meeting with the commissioner, who I think we all are very impressed with.

Mr Syed: No, I haven't met her. I believe she is the right person. That's why I mentioned her. She is an outstanding person.

Mr Conway: So what is the palace guard saying about why you, as the president of—

Mr Syed: You know what happened? I sent a letter to the chief commissioner, and then the staffers came into play.

Mr Conway: The palace guard.

Mr Syed: "Hey, why do you want to see her?" They started questioning me. I happen to also be the editor and publisher of a paper, so that was the whole thing. I said I would like to interview her. "Oh, no, no, no. Why do you want to interview her?" I said, "She's doing a fine job." "No, no. No, she's a very busy person. You just send your questions." Then I sent this set of questions to the lady, and after two or three weeks, "You can see her, not this month but in March."

Mr Conway: So you have an appointment.

Mr Syed: I got an appointment because they heard I was going to prepare this presentation, so they thought it was better that they provide me with an appointment. My concern was to get some meat or something to put in my presentation, which unfortunately is entirely my own. That's the reason I got in touch with the director of that publication. This morning I got a package, because they somehow came to know I was doing something. That package came this morning. The information about an

interview came probably a couple of days ago. That's how these things move.

Mr Conway: Well, the great spirit moves in remarkable ways, I've found in my life in politics.

Mr Syed: You are right. They do sometimes.

Mr Conway: In terms of this whole business about how we improve the efficiency of the commission, we've had representatives of what I will call the industry before us, many of whom are not without an interest in this, an interest beyond the policy questions, to be perfectly blunt; good people, to be sure, but industry representatives in one way or another. They've argued, simply, "We've got to have more money, we've got to have more staff, we've got to have more opportunities to participate."

You mentioned legal aid. Boy, I scarcely recognize the legal aid creation we've got now compared to what it started out as being.

Mr Syed: I think that is now being somewhat abused. That is the problem.

Mr Conway: Yes, it is. There is no doubt that it is being abused.

Mr Syed: I agree with you. The thing is that the people are taking advantage of a situation. But here the people are going because of some specific discrimination. Probably they are entitled to have some sort of legal assistance or professional assistance, or if the lawyers are on the staff of the commission, they can assist the people who are coming to the commission with a complaint.

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Mr Conway: There's no question that there are very serious difficulties we have to address. My concern, on the basis of 18½ years around this place, is that we've launched a number of processes that had the best of intentions to resolve conflicts of one kind or another. They were intended to be informal and user-friendly and—I can't think of a case where it's been proven otherwise—they have just been taken over by my good friends in the legal profession who are very public-spirited individuals and who are driven by their clients on all sides.

That which used to take three days, took three weeks, took three months, took three years. That which used to take in constant dollars 10,000 bucks, suddenly took 150,000 bucks, and on it went. How do we avoid that kind of growth on the one hand, and on the other deal with the very serious problems that everybody's identified in this very important—

Mr Syed: You are right. There is again a need for education. Unless we are properly educated and properly attuned that these provisions exist for genuine things—and you are right, there is a wide variety of abuse existing. Once something is there, people start abusing it, maybe a little bit in the commission as well. But there is now an absence of that particular provision in the commission.

If the commission has, say, a number of lawyers on staff, who can provide professional help to the people coming to the commission for filing complaints, in a way you are providing some sort of assistance.

Mr Curling: I just want to say that 65 officers are doing 10 million people, and more cases are coming forth every day.

Mr Syed: That's what I'm saying.

Mr Curling: So we need more officers.

The Chair: Mr Syed, thank you for being here this morning. We appreciate your time and your contribution.

ADVOCACY RESOURCE CENTRE FOR
THE HANDICAPPED

The Chair: Our next deputation is Mr David Baker, who is the executive director of the Advocacy Resource Centre for the Handicapped. Welcome, Mr Baker. You're very busy this week, between the committees.

Mr David Baker: Yes, I was at another committee last week.

By way of background, the disabled community comprises the largest single group of complainants to the Human Rights Commission. They were added to the groups of protected classes in 1981, so they're a relatively recent addition. At the time when disability was added, and again at the time when the protection for disabled people was significantly improved in 1988, there was no major increase in resources to the commission. That's perhaps a noteworthy preliminary point.

As noted in the brief, ARCH maintains approximately 25 cases open with the commission at any given time. We have not been able to take on very many cases because cases don't get closed, and when a case is open, that places demands on our time and resources. We're simply not able to assist as many people as we would like to. None the less, we have a significant presence with the commission at any given time.

ARCH is composed of 48 disability organizations. They're listed both in the brochure you have and also inside ARCHtype, which I've given to you.

In late 1991 and early 1992, ARCH travelled, together with several other disability organizations, to eight centres across the province to hear what people had to say about the Human Rights Commission. We also served as legal counsel to the Coalition on Human Rights and Disability Issues, which represented a very large percentage of the disability organizations in this province. The recommendations from that coalition to the Cornish task force are appended to my brief for your information. I won't go through all of those. I know your purpose is not to duplicate the work of the Cornish task force, but obviously I have no quarrel or concern with any of those recommendations, and they're available to you.

The big issue in relation to the commission remains the question of the backlog, and certainly I agree with all the speakers who must have been presenting to you that the backlog has to be wrestled to the ground. There was a backlog task force which worked on a number of cases. Unfortunately, that only shifted the problem over.

I don't know if other speakers have mentioned this to you, but there is a significant problem in that the commission appointed a number of boards of inquiry, but with only seven commission counsel it is backlogged, in setting dates, well into 1995 for hearings, so there is yet another bottleneck for the commission. I should say too

that I don't have instant solutions to all of these things; I would just like you to be aware of them.

I understand from a media clipping that the chief commissioner, whom I have met and whom I respect greatly, came before you and advised you that a miracle has been performed in that the commission backlog is being reduced, and I'd like you to be aware of some of the contributing factors. In my submission, it's less than a miracle, what has been performed, although obviously that backlog has to be dealt with.

First of all, we have noticed a very high increase in the number of people who are told they cannot file a complaint, which is contrary to the law, and who are aggressively discouraged from filing complaints even though they have perfectly valid reasons for doing so. We have brought all of these points, I should say, to the attention of the commission. There's nothing I'm saying here that hasn't been brought to the attention of the commission. We've had to intervene in a number of these cases, which we would not otherwise have done, to assist in the drafting of the complaint.

One way they're managing their backlog is simply to tell people to go away in cases where we feel, at least, and I think we have some expertise in the area, they have perfectly valid reasons to feel they should be able to file a human rights complaint. We attribute that in part to the lack of training of commission staff in disability-related issues—they just misperceive the issue—but also it appears to be a clear mechanism for case load management.

Second, we have six cases in our office right now of people with disabilities who were fired from their jobs because of their disabilities who were told they were not sufficiently severely disabled to be considered disabled under the terms of the Human Rights Code. These range from mental health problems to carpal tunnel syndrome; a range of physical disabilities. The Human Rights Code, as I've mentioned in the brief, speaks of "any degree of physical disability, infirmity, malformation or disfigurement." It also talks about people who have histories of disabilities—that is, who are no longer disabled—and it also talks about people who are mistakenly perceived as being disabled. The wording is very broad.

As I say, we have six cases in our office right now; we've had a number. We've had to threaten legal action to get the commission to accept its legal responsibility to take complaints from these people, and these are people who have lost their jobs specifically because of their disabilities. It's sufficiently important in the mind of the employer, at least, to dismiss the individual, and we're deeply concerned about this.

As is mentioned, there was a decision called Lily Cups in which one board of inquiry, one law professor, decided to read this definition quite narrowly. The commission consulted within the disabled community about whether it should appeal. To my knowledge, all the disability groups, those with which I'm familiar anyway, advised appealing, but the commission elected not to. The reason is that it relieves a burden for the commission; it cuts down on the number of complaints.

The intake officers who are interpreting this decision

have gone much further than the wording of the decision could be stretched to contemplate. Again, if you want to keep your numbers down, one way is to tell a person that they're not sufficiently disabled and to move on.

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The third mechanism we've seen—and if you've heard from CERA, you'll have heard some stories on this as well—is that even when people are represented by counsel there is tremendous pressure put directly on individuals to accept extremely low settlements. Often this happens where you haven't heard a single thing on your file for two years, and then an officer approaches you and says, "Will you take \$1,000?" It's known as a nuisance settlement, and I think it brings the whole process of human rights into discredit, because employers are saying, "It's cheaper to pay \$1,000 than to provide representation." Their position on it is understandable, but they come away saying this process is a bad process. And from the standpoint of the complainant, they have not had their allegation of discrimination dealt with, so they don't feel their concern has been properly addressed. We're particularly upset in circumstances where officers seek people out directly when they know they're represented by counsel, and these things should go through counsel. They're perfectly aware of this: When it's brought to their attention, they're quickly apologetic and so on.

The fourth concern is the inadequate training of investigating officers in disability issues. I should acknowledge, first of all, that these issues can be complex. There is a very broad range of disabilities and there are some fairly complex issues that can arise, both in relation to the disability and in relation to the accommodation which is necessary to permit a disabled person to fully participate in our society.

However, I mention one case; a client of mine, as it happens. The case was before the commission for nine years. It never got to the commission; the investigation was never completed. The investigating officer got it into his head that my client had misled her doctor in relation to the severity of her disability. He drew these conclusions based on his own personal reading of the clinical record, with which he was provided. When he asked me about this, I referred him to the doctor. I said, "If the doctor is concerned about having been misled, then I guess we should all be concerned." I asked him to speak to the doctor.

The next thing is that he writes his report to the commission—which is the process leading up to the commission's decision—recommending that the complaint be dismissed because she'd misled her doctor about this information. It was only when I insisted on getting more information from the doctor that I learned that the doctor had in fact provided the investigating officer with a very clear letter saying that his theory of this thing was totally wrong and that my client had not misled the doctor in any way, shape or form.

None the less, my client was so upset by this—she was literally called a liar in the investigating officer's report—that she withdrew a complaint that had been there for nine years. She'd lost her job. She'd gone back to college after a very traumatizing experience and had been

working in a new job successfully for about four years, waiting for all this to happen. She was just that disgusted with the way her complaint was handled. And it's not atypical: The investigating officers do not know about disability issues. There's a fairly high turnover, and that may contribute to the problem.

There are cases and then there are cases. My fifth point here is that there are cases which have broader implications and are more difficult for a number of reasons to investigate, and there are some that are quite straightforward. It doesn't appear to us that in giving credit to investigating officers the complexity of the case is taken into account. If you have to close two files a month, let's say, investigating officers will be able to assess what's a difficult case and what's an easy case, and you'll want an easy case for sure and you won't want to get a difficult case, because you're not given any particular award for dealing with those difficult cases.

It happens that ARCH is there to take some of these more difficult cases. That's what we've been asked by our member groups to do. As a result, while I don't challenge Ms Brown's statement that as of March there are only 250 files left that are three years or older, a very high percentage of our 25 cases go back more than three years. I mentioned one that went back nine years, and there are others that go back a very long time. These have not yet been resolved.

I'm concerned that the commission structure, which is designed to clear the backlog and to get those numbers lowered for your attention, is not taking into account the complexity of some cases and is not rewarding the human rights officers who are willing to move those cases.

The final point is that the commission—perhaps wisely, but I think you should be aware of it—has dropped virtually all its other functions in the interests of dealing with the backlog. They're not doing public education. They're invited to speak and they decline. They are not involved in the policy advice process or the public education or the preventive process of human rights. They are focused almost exclusively on dealing with individual complaints, which is a totally reactive process. While I can understand it, I think you should be aware of it.

In summary, from the standpoint of the disabled community, we're pleased to hear that the backlog is being dealt with, but we don't believe it's a miracle. There's been some tremendous hardship for people out there in the process of dealing with it, which, if I were not here, I suppose you might not be aware of.

Turning to where we go from here, I know that the Cornish task force report is before you. I have not chosen to deal with that in specific terms. I will simply say I don't have any great quarrel with the conclusions of the Cornish task force. My personal opinion is that it would not require significant additional resources beyond a short transition period, but that's not based on anything other than my personal reading of it. I haven't the expertise or the qualifications to say more than that.

I do feel it's important to be aware of the cost of backlogs. Again, I mention one particular case. A very large number of complaints that go to boards of inquiry

now are met initially with an application to have the complaint quashed on the basis of delay. The respondent says, "This delay, in and of itself, has been unfair, has worked an unfairness to me." I'm involved in a case. We went through four days of hearings on just this issue of delay—four days of hearings. If some of you are aware and have heard comments about lawyers and so on, the cost of that is tremendous. There were certainly more than 1,000 pages of written submissions, evidence and case law put in through all of this. We waited six months for a decision. We've now heard that the case will be going forward. We're waiting for the decision of the board on just this preliminary issue of delay, which we are told will be more than 100 pages long.

Unless the backlog issue is dealt with, every case is going to run into this delay application, which, at a minimum, is going to cost a huge amount of money just to hear it argued, and then the result, if the delay application is upheld, is that the complainant completely loses their right. That's the net result. Unless we are able to do something with it, either through providing adequate resources or making some wise decisions about what changes need to be made, the net result will be that people do not have human rights in this province because boards of inquiry and the courts are dismissing these cases because they've been around too long and they say it's unfair to the respondent. If we're to have human rights for people, it's important that we deal with the backlog.

I have two very short points to make to you about how I feel we can deal with the backlog without essentially removing the human rights which the code says disabled people have in this province right now.

The first one is that we need to have procedures that get you to a hearing or that there's some assurance of getting you to a hearing. Right now there is absolutely no reason in the world why a respondent would not delay a case as long as they possibly could, because he or she knows there is this huge bottleneck at the commission and they know there's this huge bottleneck with commission counsel, so only a small number of cases are going to be heard out of the total number of complaints that go forward.

What is going through a lawyer's mind is this: "There's no reason on earth why we should discuss settlement of a case," which is the way the vast majority of cases are resolved in normal litigation, "there's no reason to even think about settlement, unless a board of inquiry has been appointed." You simply draw it out for as long as you can, make sure it's as stale as it possibly can be, and then you're into the lottery of which cases go forward, and only at the last minute will you settle it. That takes a tremendous amount of public resource to get through all those stages to the courtroom door before there's any reason at all for a respondent's lawyer to think about settlement. We really need to find a way, I feel, to make it clear that valid cases are going to go forward and should be settled at the earliest possible date to minimize the expense for everybody concerned. Right now our system doesn't do that.

The other important consideration is that the obligation

on employers and service providers and so on to disabled people is far from clear at the present time. With this lack of clarity, it's going to take years and years and years and lots of expensive lawyer time to get it up to the Supreme Court of Canada and clarify some of these things, and even then you can be disappointed and wait another period of time. Meanwhile, there are high expectations on the part of disabled people and low expectations about these rights in the minds of potential respondents, and you have this enormous potential for litigation and very little incentive or willingness on the part of people to change, to actually provide disabled people with the kind of accommodation they require to be participating members of society.

1130

Essentially, what I'm saying to you is that whatever the resources turn out to be—I don't object to increasing the resources but I'm not sure that's in and of itself the solution—the commission should be given the mandate to take no more cases than it's capable of handling well, and those other cases should be free to go straight to a hearing. We should provide counsel, whether lawyers or lay advocates, whatever, to assist the person in representing themselves before that hearing. That will mean respondents will know cases are going to go forward. We need to do that.

If we don't have the resources to do what we're presently doing now for everybody, then we should make sure the commission uses the resources it does have wisely and make sure that other people have the entitlement to have their issue heard and disposed of one way or the other.

The other point I'm making here is that we could be much more specific about what it is disabled people are entitled to expect by way of human rights. We could say what we mean when we say there is a duty to accommodate disabled people. We have an opportunity as we draft the regulations, for example, under the Employment Equity Act, to say what we mean and what it is that an employer is expected to do to accommodate a disabled employee.

We have accommodation guidelines which were released in 1989 by the Human Rights Commission which don't have the force of law, but right now the government could take those accommodation guidelines and make them regulations. There's the authority right now, and that request has been made by every chief commissioner since 1989 to the ministers of Citizenship asking that it be done. That has not been done, and it could be done and it should be done. It would simplify cases and clarify the position of disabled people enormously.

Finally, during the last election the Premier spoke in support of the idea of an Ontarians with disabilities act, patterned after American legislation, which would essentially set standards in a number of areas; for example, access to buildings, to transportation and so on. This was done in the United States and has been successful in removing a number of barriers, and it again relieves the pressure on the litigation system. You've set standards and people are expected to live by them. You

can dispute what the standards should be, and one would expect that the standards might well change over time and people have to be given time to adapt in some of these areas, but it would mean we're not totally dependent on individual cases in litigation, as at present.

Mrs Witmer: You indicate here that the implementation of the employment equity regulations are going to help the disabled and that there need to be some expectations provided. What type of accommodation measures do you think the employer community should be providing for the disabled community?

Mr Baker: The draft regulation speaks of a process that would work, so process is quite important in this area. If people don't know that they're entitled to ask for accommodation or if they don't feel comfortable with that, they will not be capable of performing the job because they will not have the accommodation they need.

Second, there's mention in the draft regulation of human assistance, which is probably the most difficult area of accommodation because it's often an ongoing expenditure. This would include sign interpretation where necessary, personal assistance and so on. That is addressed in the regulation, as it is in the regulations under the American legislation. That's proven to be workable and feasible: Employers are living with that there and I expect they will be able to live with it here.

Those are two points addressed in the regulation. We would prefer to see a clearer statement made about the extent of the economic obligation on employers.

Mrs Witmer: What is the extent, in your mind?

Mr Baker: I haven't got a number to give you. It would have to be a fairly complex formula based on the scale of the operation of the employer. That is what the courts are saying in the United States. They have regulations which are much more specific in this regard.

I can't give you a number, but I'm saying pick one and then we won't have to litigate it; we'll be able to know where we stand. If it's not going to be very high, maybe the disabled community has to live with that, but having clarity is preferable to holding out false hope and encouraging people to litigate on something which ultimately may not be successful anyway and just delays the whole issue interminably.

Mrs Witmer: You've made an excellent point: the need for clarity and not to hold out false hope. Often-times legislation is passed and there are great expectations, and this document is part of that, but I don't think we will ever live up to the expectations that have been created in people throughout the province.

It's interesting to listen to your presentation. You probably heard me say that Ms Brown feels that she has been dealing with the backlog well, and we've certainly heard something quite different from yourself, and it is the disabled who bring forward the majority of cases before the commission.

Mr Baker: I'm not sure it's the majority, but it is the largest single group, I know that.

Mrs Witmer: That's right. You obviously feel quite differently, that there are major problems that still need to be resolved.

Mr Baker: There are major problems, and there's a lot of pain out there for people who are being told they don't have human rights.

In relation to your point about expectations, there are many other countries—I would say most other industrialized countries—which give disabled people valid reasons to have higher expectations than they do in this country. I think we could do better and I don't think it would affect our competitiveness. I think business is more receptive in this area than many people might believe.

Mrs Witmer: I would agree with you there. I think they are quite receptive, but we have to establish some clarity and some guidelines so they know what the expectations are, on both sides.

Mr Baker: There's a lot of fear because of the uncertainty.

Mr Rosario Marchese (Fort York): You said you had met with Ms Brown. You've outlined to us a number of problems, and I assume you raised those issues with her.

Mr Baker: Yes, I did.

Mr Marchese: How did you feel about the conversation you had with respect to them?

Mr Baker: She'd been in the province I think two weeks at the time, so she was simply gathering information. She shared our concerns, but to date I can't honestly say I can detect any change. To a certain extent I detect a worsening of the situation in relation to this problem of the definition of disability, because we have six cases right now. They come in here and there, but to have them all come in at once suggests it's more widespread now.

Mr Marchese: I was about to say that I would assume, given that she'd met with you and you raised those points, she would take them into account. What you're saying is that from the facts, perhaps it isn't happening. My assumption would have been that they would have been taken into account in terms of the work they have been doing with respect to a number of issues. I think they've outlined eight issues they've talked about in terms of improving the efficiency of their operation.

Mr Baker: Yes, I read those, and many of those are very important. Computerization, for example, was just unbelievable. They couldn't find files. It would take months for them to find where a file was.

Mr Marchese: Right. So all of these—implementing a quality and quantity assurance system; establishing a coherent and meaningful customer service program; streamlining and enhancing enforcement procedures; using technology; a lean and rational organizational structure; accountability; training and development; and acting decisively to ensure organizational health, including the use of sound anti-racism principles—would be what they should be doing, but perhaps it may not be enough or we still have to look at other areas for improvement. That's the question I want to ask you.

1140

I shouldn't be arguing for Ms Cornish, but based on the report that she's written and her presentation, I'm assuming, she would argue that the whole system needs to be overhauled; that these points in and by themselves

may be good and nice, but it's not the right approach to dealing with human rights issues.

Do you believe the system needs to be overhauled in order to get to the questions you've raised, or do you believe that somehow continuing to work on these things they have started to work on in the last four or five months is what is needed to get to the problems you've raised?

Mr Baker: The things I've heard about the changes within the commission I regard as generally positive, and certainly I am very positive about Ms Brown; make no mistake about that. But I have not seen any action on the issues we took to her when she first came. My conclusion is that the backlog would not be going down the way it is if appropriate attention were being paid to these issues, because there would be more complaints being filed, there would be more complaints being dealt with more seriously, and there would be more effort and research being put into certain systemic issues which are not being dealt with now.

At the end of the day, I do not believe the commission is going to be able to address its problems through efficiency and management expertise alone. I believe they're going to have to restructure, and that's why I support the basic recommendations in Cornish. I'm not wedded to any particular recommendation in there. We have to be flexible, and that's what I've tried to be here. For me the key issue is clarifying what people's rights are and making it clear in everybody's mind that people will have their day in court, and that will encourage settlements.

You know, 97% or 98% of wrongful dismissal actions, which are comparable in many ways with the vast majority of these complaints, settle. That's not what happens in human rights. These things are gold mines for lawyers, it's true. I may be speaking contrary to the interests of my profession in saying that, but the real interest of the province, if you're not going to just walk away from human rights for people, is to encourage settlements of complaints by clarifying what people are entitled to and how they're going to get it.

Mr Curling: An excellent presentation, and I want to commend you. When Mrs Brown came before us, she said a couple of miracles had happened, and the \$6 million had done it. Give me \$6 million and I'll reduce the backlog and reduce the workload and reduce some of the work that was piled up. Mary Cornish made a statement saying that it hadn't solved one discrimination practice, that all it has done is reduce the workload.

Mr Baker: If I may say, I think the truth lies somewhere in between.

Mr Curling: I think so. In reducing it, they must have solved some, but basically I don't think we have progressed a lot.

I was reading through the recommendations you put forward, and some of them are quite interesting. So is Mary Cornish's report. You said you hadn't married them or correlated them in any respect, but you have no quarrel with Mary Cornish's recommendation.

Do you feel the government is serious about the

reformation of the Human Rights Commission? If you feel that way, why have they not responded to the Cornish report recommendations? Do you think they have a commitment? I don't want to be partisan. The fact is that the Liberals get recommendations and the Tories get recommendations and the NDP gets recommendations, and is there action? I just wonder if you think any government has demonstrated any true commitment to human rights in this province, to act upon recommendations that have been put forward to them?

Mr Baker: I think the best way to answer that is to say that I have seen no indication that the government is going to implement the Cornish report to this point in time. I remain hopeful that this government, or any government, would be committed to human rights in this province and would see that some restructuring is going to have to take place to deal fairly with human rights issues in a way which is affordable by the province.

Mr Curling: Education would help all of us, those who are being discriminated against, to understand human rights violations. As we educate people, we would find more cases coming before the Human Rights Commission. I understand there are only 65 officers there who deal with cases, so it will increase. Do you think more funding would assist?

Also, this commission should maybe be reporting to—I think you mentioned that in your recommendations, but I was reading it so fast I just wanted you to confirm it—a legislative committee instead of to a ministry, because most of the human rights cases are directed at the government.

Mr Baker: To take the second point first, I'm aware of the Cornish recommendation. I don't have strong views on reporting contributing to the solution to this particular problem. To my knowledge, the independence of the commission has not been a big issue to this point.

In terms of the issue of 65 officers, you're aware that Cornish proposes a very different approach to that question. I'd have to say I'm flexible on that. The number of officers could be increased; the Cornish proposals could be implemented. I'm saying that the officers, however many there are, should be told they're going to be doing a quality job and are going to deal with complaints in a reasonable time. With any complaints the commission can't deal with, people should be free to go to a hearing quickly, with the assistance, if they would be considered entitled to financial assistance, of a legal worker or a lawyer or whatever, have their day in court and get it over with one way or the other. That's what I think.

The Chair: Thank you for your time this morning, Mr Baker, in appearing before the committee and making a strong contribution on behalf of ARCH.

BHAUSAHEB UBALÉ

The Chair: Our next deputation is Dr Ubale. We welcome you this morning and we also would like to thank you. You've been very accommodating about fitting in with cancellations and moving your appointment time around, and the committee appreciates that.

Dr Bhasaheeb Ubale: I must apologize that I have

not made any written submission, because I was abroad and I only came back two days ago. I got the invitation and I thought at least I would come and express some of my views.

As you might know, for I served this province as a human rights commissioner for eight years and the federal Human Rights Commission for three years, I have been arguing all along the number of changes I would like to see. I appeared before this committee on October 6, 1989, and made a detailed presentation. Apart from that, all my public statements on this issue explain my own position. I thought at that time that the committee had very little time, so when I made a response to Stephen Lewis's report—I wrote a book, as you know, *The Politics of Exclusion: Multiculturalism or Ghettoism*, in which I devoted eight chapters to the whole development of resolution of human rights in Ontario and how we should proceed, what needs to be done, including employment equity. I did that immediately so that at least members would have the benefit of all the development that had taken place, so when they responded to Stephen's report they would have all this at their disposal.

I am just going to restate some of my own views and then perhaps we may engage in discussion. That's what would be most helpful. I want to state very clearly that this is a non-partisan approach; I'm in this field because of social concern and all of you are also looking at this issue from that perspective.

I'm not going to deal here with the complaints about the Human Rights Commission and what the staff are doing, because from my own practical experience, commissioners as well as staff have been doing their work at a great personal cost. They are very dedicated persons, people with whom I was associated and with whom I am associated even today. They are extremely socially conscious people, so the criticism that comes against them is not so much because of a lack of work or of devotion on their part, but we are dealing with a very defective instrument. Therefore, when you are looking at the operation of this Human Rights Commission you have to ask the fundamental question, are we serious about human rights in this province?

1150

If we are, then my submission to you is that the instrument which we created in 1962 is not applicable today in the present form. We have gone through this cycle of complaint and resources. We appeared before the committee, asked for more resources. We tried to do a lot of experiment inside, a fast-track process. We went to the United States, we got experts from there. A number of experiments have been done to reduce the backlog. Sometimes we manage to reduce the backlog, then again after three or four years the backlog increases; you come back again before the committee, and public criticism mounts. These are cycles, and this comes from two reasons.

The case-by-case approach we started initially was very helpful when the Human Rights Commission was at an elementary stage. At that time, whenever the complaint was received the respondent immediately reacted.

There were a lot of successful cases in conciliation. Now the whole quality and quantity have changed in the sense that the respondents are using lawyers, so the whole issue of quality has changed. Therefore it is taking much more time for an officer than it used to take before.

As I said, you have to deal with fundamental things in the sense that any resources that you may pump into the Human Rights Commission are not going to solve this problem today because after a few years the commission will be here again.

I suggested at that time and I am still of the opinion that it is important for us to take a fundamental look at the commission, at the structure of the commission, the way we operate, because commissions should get out of a case-by-case approach. It is not going to help. It's a graveyard. A number of institutions in other countries have gone through that. The United Kingdom in 1965 established a race relations board. They went through that process and found that in spite of all the resources that were spent, they were not successful. As a result, in 1975, the Commission on Racial Equality was appointed and the United Kingdom gave the case-by-case approach to industrial tribunals so the people could take the cases to other courts.

We may have to look into that at this stage. One of the successes we had was at the conciliation stage when the Human Rights Commission got involved. When I was a commissioner at least 65 cases were conciliated, so we had that success. If you ask the complainant to go directly to court, that mechanism may not be available, so I have suggested all along that once a case is dismissed by the Human Rights Commission the complainant must have a right to go court. Today, once the case is dismissed the complainant has no options, no alternative to go anywhere else. Reconsideration is not appeal.

Ultimately, I came to the conclusion that you need a major partner in this. In the United States you will see that the Equal Employment Opportunity Commission farms out investigations to all the municipal governments, to other institutions, so that backlog, the workload, is now reduced.

Therefore one of the suggestions I made, and I still strongly believe it, is that you have a model of the police commission: You have at the regional level police commissions. I would suggest you follow that model with the Human Rights Commission. The advantage you will have is that you create regional commissions so that people in the regions, say for example London or Windsor, if you have six or seven commissioners working there the commission will have far more influence on the local communities, solving the complaints then and there rather than concentrating here at the Ontario level. Doing that, you will have a maximum involvement of a large number of people in the human rights movement. At the same time, having a municipal government as a major partner, you will at least reduce a lot of the workload and administrative expenses, leaving the Ontario Human Rights Commission to deal with systemic discrimination.

Systemic discrimination is a major problem. Once the Human Rights Commission is bogged down in dealing with a case-by-case approach, it has no time to deal with

systemic discrimination. Your major problem is systemic discrimination, and therefore I'd like to see that the Ontario Human Rights Commission deal with systemic discrimination, and any appeal arising out of a complaint from the regional commissions, the Ontario Human Rights Commission should be able to deal with it.

That creates another problem in the sense that now you are in the process of establishing an employment equity commission. The work involved in systemic discrimination and an employment equity commission's work is much more overlapping. There is no fundamental difference in the sense that you'll be duplicating the work; therefore there may be room for you to consider merging these two together.

Why have a separate commission when you have a Human Rights Commission? The human rights movement deals with three issues. One is social education, public education, because discrimination arises out of engrained attitudes which cannot be changed by legislation alone. It has to have massive social education, public education, attitudinal changes. That's one instrument you have. The second instrument you have is the enforcement of law, which is existing legislation. The third instrument you have is what we call employment equity. When you apply these, the mixture has to be change as society goes along. Therefore, there has to be a lot of coordination, work relationship. That cannot exist if you have a fragmented approach.

If I'm an employer, I'll feel very uneasy having one visit from somebody from the race relations division coming and giving me a lecture on how we should change our behaviour, the Human Rights Commission coming and giving me another lecture, and then employment equity people coming. For the same one work I'm having three agencies knocking at my door, and I'll get very angry about it. That is what is happening.

Therefore I suggest to you, with great urgency, don't look only at how much money we want, whether this procedure is working or not, whether that statistic is proper or not, because I can produce those statistics. If I want to reduce the case load, we can add up some methodology and reduce the case load.

But investigation is qualitative. We may close 30,000 cases, but was it quality? Has anybody checked that? As I said, the complainant has no recourse if the complaint is dismissed, so there is no way for anybody to know whether that was a qualitative investigation.

Rather than just bog down with this kind of statistical play, I want the members of this committee to take a really serious look at it. Where are we going? What kind of society do we want? Is this instrument today applicable? Is there any room for change? My honest submission to you is that there's room for change. You must look at the fundamental issue of the Human Rights Commission and human rights movements in this province rather than just merely an operation.

Thank you very much. If you have any questions, I'm willing to answer.

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The Chair: We're starting with the government

members this time. No questions? Mr Curling.

Mr Curling: I'm surprised the government has no questions, but I presume it was so precise and so informative that there's a lot of food for thought in what you said.

Dr Ubale, I want to thank you for coming before the committee. Again you've made an excellent presentation. As a matter of fact, if I dare take the liberty to say this, I think it's one of the best presentations I've heard overall on what Ontario should be doing. We've spoken a lot about reform of the Human Rights Commission and we have all—I myself am guilty of that—narrowed in on one aspect of it like backlogs and systemic discrimination and we don't look at the overall structure.

The key question you've asked which we must toss in our minds as legislators is, are we serious about human rights? As soon as we answer that we can proceed. I am serious about human rights in this province, in this country. I think we have the opportunity to change that.

You said a rather interesting thing. You said we already have a police commission which is a model we could copy or look at as a direction in which to go. You're saying that after we have looked at the Human Rights Commission and it only deals with systemic discrimination and not case by case, who would deal with it case by case then? Are you saying the police commission?

Dr Ubale: The regional commission should do a case-by-case approach.

Mr Curling: Regional commissions of human rights?

Dr Ubale: Yes, the regional commissions. If you set up one in Hamilton, one in Windsor, one in Toronto and one in Ottawa, they should do a case-by-case approach because they are more effective at the local area. They can attempt a lot of conciliation, they can pursue the employers, they can do a lot of changes, because they have a day-to-day contact with the local employers and in education.

I'm saying that I would have preferred to have that case-by-case approach handled by the courts. Because there are benefits of a conciliatory mechanism, in our human rights act we have that conciliation where people sit together and settle their cases. That mechanism may not be available in the court system. So what I'm suggesting is this. Suppose somebody's a complainant and lives in London, Ontario. He or she can file a complaint with the London human rights commission. Under the same act, all you have to do is delegate the powers to that commission. You have already a human rights act, so when an individual files a complaint with London, the London commission can process as it is done here now at the Ontario commission. They can process a complaint. If the complaint is dismissed and if the complainant is not satisfied, that complainant can either file an appeal to the Ontario Human Rights Commission or can go to the court directly.

What is happening, especially in the area of race and a number of other areas, is that we have systemic discrimination. I'll give you an example of the United Kingdom when they went to this process. They began

sector by sector. They took the transportation sector, and all 30 or 40 officers went into the transportation industry for six months and identified what had been an impediment for minorities to get promoted or discriminatory behaviour. They understood the system and then made a ruling to the entire industry that it must change its behaviour, otherwise the commission would take in a complaint. They gave the industry, say, one year to change its methodology, any bottlenecks it had for minorities and others. That report was submitted to the commission and the commissioners were able to satisfy it and they dealt with it.

If you go sector by sector in systemic discrimination at a provincial level, then you don't have that problem of backlog. What is happening is that if I'm a chairman of the commission—75% of my time when I was a commissioner was spent on dispelling the public myth and only 25% of my time was spent on constructive work. One of the worst things you have is a disgruntled, dissatisfied complainant, and we have many because of the existing procedure. The disgruntled, disappointed complainant goes to some of his own groups which feel that he or she was discriminated against and then you have newspaper articles and the whole commission is defamed.

It is for that reason I was pursuing that. Operationally, there are two sets of things: The Ontario Human Rights Commission must specialize in systemic discrimination alone so its resources could be effectively used, while the case-by-case approach would be dealt with by municipal commissions at the municipal level.

Mrs Witmer: Are you planning to put anything more on paper?

Dr Ubale: I have already; it is in Hansard. I did that on October 6, 1989. And the details are in my book, which is in your library here.

Mrs Witmer: That would be very beneficial. You talk about systemic discrimination. What is your definition of systemic discrimination?

Dr Ubale: The system that prevents minorities, women and others, getting equal opportunity. For example, during my own time we were dealing with hiring in the police forces. We had a battle with the Toronto police force because they had a system where to join the police force you had to be five feet, six inches. That was the system, and they said, "We don't care whether you're brown, yellow or anybody, as long as you can meet that criterion." Their intention was not discriminatory, but the result was discriminating because it was preventing large numbers of Ontarians, Orientals, from joining the police force, so therefore it was defeating the purpose of the Ontario Human Rights Code, which ensures equality of opportunity. The system was set up in such a way that it prevents others joining that organization, and that's systemic. It's a system we are dealing with. We are not dealing with the intention, but the result.

Mrs Witmer: I appreciate that difference.

When we had our other individual in just before you, Mr Baker, he talked about the disabled. The statistics confirm that they are the largest group in terms of

bringing complaints forward. What do you perceive to be the systemic discrimination they face within the system that needs to be overcome?

Dr Ubale: Various rules and regulations. We are all disabled. I mean, I'm disabled if I take my glasses off. We faced that problem, when I was at the Canadian Human Rights Commission, with the armed forces. For everything else the armed forces would need that you had to be physically fit. That was not necessary, because with corrective measures now, we are able to do the work. Therefore, the job description is such that it clearly is systemic discrimination.

I can give an example. Take a receptionist's job. The people in the human resources department may say, "What is the function of a receptionist? Well, 50% of her time is on receiving people, and 40% is for typing." What do you do with the other 10%? They may say, "The other 10% is filing; you go to the rack and file it." Because of that 10%, they're creating a system that prevents a physically disabled person from taking that receptionist's job. That 10% can be done by anybody, but by building that element in the job description, they are doing a systemic discrimination. They are creating a system by which they are preventing a physically handicapped person joining that position.

There are a number of situations in each company where such things are being done, and you have to find out whether a function can be done differently. But that needs a lot of resources, a lot of studies, and this is where I feel a human rights commission should devote his energy and resources, rather than just adding numbers, cases we deal with.

Mrs Witmer: It's a very complex issue, and obviously this committee writing a report is not going to solve problems that remain. Thank you.

The Chair: Thank you again, Dr Ubale, for your contribution and your time appearing before the committee this morning.

Dr Ubale: I thought I got an easy time.

The Chair: It's all your years of experience, probably.

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UNITED STEELWORKERS OF AMERICA

The Chair: Now we have our rescheduled appointment from yesterday, Mr Brian Shell from the United Steelworkers of America. Welcome, Mr Shell.

Mr Brian Shell: I initially would like to apologize to all of you, particularly to you, Madam Chair, and to the clerk, for my late arrival yesterday, which was in fact after you had adjourned. I want to express my personal appreciation that you have allowed me to reappear today.

I appear before you on behalf of the United Steelworkers of America, whose Canadian general counsel I am. In that capacity, I advise the Steelworkers, a union consisting of some 170,000 people across Canada, largely in the private sector, and about 70,000 or so members in Ontario, in virtually every sector of Ontario's economy, from nursing homes to steel plants, from mining to hospital employees.

A trade union has an increasingly complex role in the delivery of human rights legislation. At the same time, we promote the advancement of non-discrimination. We train our local union activists. We seek to engage with employers in an enforcement process by which employers will not tolerate discrimination in the workforce. Yet we also participate in the administration of collective agreements, and in that capacity we have special responsibilities to make sure that our collective agreements don't violate the Human Rights Code. These obligations have been recently enforced through a number of important decisions of the highest courts in Canada.

It is clear that trade unions have liability as well as obligations under the Human Rights Code, so at the same time we are defenders of our conduct and advocates on behalf of those seeking and claiming human rights administration. That puts us in a very special place. That very special place means, first of all, that we actively promote the adjustment of collective agreements to accommodate the interests of those who can claim lawfully to have accommodation; for example, religious minority members, persons with disabilities, women. The Human Rights Code imposes accommodation obligations on employers and on trade unions in the management of their collective agreements.

But where discrimination appears to be something that is simply perpetrated by an employer, we join with our member who is a citizen, who is a worker, who is a person in a community, and we assist that person in the process by which such a person can claim rights before the Human Rights Commission. Sometimes we respond to complaints filed by our members. More often we are the advocates on behalf of our members against employers who we say violate human rights laws. Therefore we deal with the Human Rights Commission, as a client of the commission, on a regular basis.

Like some of the advocacy groups that have appeared before you, and most interestingly the group that represents the Centre for Equality Rights in Accommodation, we bang our soft heads against the administrative nightmare of the Human Rights Commission. Even where we are responding to a complaint, the profound delay causes enormous costs to the responding party, whether it is a trade union or, more often, an employer. So the system fails to serve complainants; the system fails to serve respondents.

This is not new. Dr Ubale made it clear. I suspect virtually everybody who's come before you has said it. On my review of the remarks of the newly appointed commissioner, Ms Brown, she's made it clear. There is no pretence that the system is working. There is an apparent recognition by everybody that the system isn't working. Indeed, each of the three parties represented in this room has now been able to constructively contribute to the system's failure, so you all ought to be congratulated. Through the administrations of each of your recent governments in the last decade, this system is a mess.

The present government appointed Mary Cornish, who I know appeared before you, and she produced more than 18 months ago a detailed, comprehensive and extremely interesting report. If it is gathering dust somewhere, I

don't know where it is. There has been, as far as I can tell, no interest shown by any of the political parties in the kinds of systemic reform Mary Cornish has proposed, and there was widespread consensus about the recommendations she came up with.

That doesn't mean people aren't trying. It doesn't mean there's bad will. It doesn't mean there's a lack of consideration and concern for those who suffer discrimination. There have been more boards of inquiry, that's true. There has been a successful effort to clean up the so-called backlog, a source of enormous embarrassment to the predecessor Liberal government inherited by the current New Democratic government.

The fact is that we're busy cleaning up backlog but that there aren't adequate counsel employed by the Human Rights Commission to manage the enormous case load that's imposed upon them. How do we deal with that difficulty?

The fact is that the system is constructed so that it is complaints-driven. If you have a complaints-driven complaint system, you can expect people to file complaints, and if people file complaints and they can't be dealt with adequately, the complaints are going to backlog and you're not going to resolve it.

Mary has come up with an idea that you should really spend some time examining carefully, and you should ask yourselves, I submit, all of you, why hasn't there been movement on the Cornish report? Why have we not grasped the need to have regional and systemic units advocating directly? Why does the executive director of ARCH have to come before you—again—and say—again—that the enormous numbers of complaints filed by persons with disabilities aren't being heard and that a complaints-driven system is not going to resolve the problem for persons with disabilities?

When Ms Elliott finally achieves, after four years, a decision of the Human Rights Commission and she gets \$1,000 for the lack of dignity she received when seeking to park in a publicly accessible parking space which didn't have a space reserved for a disabled person, it gets reported in the paper. Terrific. But what happens in the mall in Scarborough? What happens in the mall in Mississauga? What happens in the mall in Barrie or Thunder Bay or Kitchener or Huntsville or Kingston or Cornwall? Who tells the property mall owner that he must provide parking for the disabled or they will be a respondent just like Ms Elliott's respondent? It's an interesting question. The answer, of course, is no one.

In a complaints-driven system the respondent responds to the complaint. If you file the complaint and it percolates through the system in four years, for four years the complainant doesn't have a disabled parking space for herself in her local mall, in her local shopping centre.

The fact is that this initial concept, that we should not engage in prohibited discrimination and we should prohibit such discrimination and we should give the victims of discrimination access to a system to redress the wrong, was misconceived. It is not the way to remedy discrimination in Ontario. It is certainly not the way for persons with disabilities.

It may be the way for other forms of discrimination. It may well be that you need to have an adversarial process when somebody is asserting, for example, racial discrimination. There may be a dispute on the facts, and whenever you have a dispute on the facts, you need to have an adjudicative process to determine which version of the facts is preferred.

But where you don't have a dispute on the facts, where it's clear that the person is disabled, where it's clear there is not a disabled sticker on the parking lot, where it's clear there is not access to a disabled washroom in the restaurant—there's no dispute on the facts; nobody is going to assert we have a sticker when we don't—a complaints-drive system is an enormous failure. It doesn't make changes. If we're serious about wanting to make changes—and it's hard to know whether we are, given our conduct in the last decade—then we have to remedy the system by having a new way of advocating, advancing and promoting these rights.

1220

The government and the Legislature have recently embarked upon a new experiment in this direction through the Employment Equity Act. When it is proclaimed and when persons begin to develop employment equity plans in certain workplaces, some of these systemic barriers are likely to be exposed and some of the systemic barriers are likely to be remedied through a process of employment equity plan creation, it's true. But not Ms Elliott, not accommodation in public places; only those aspects of discrimination that pertain directly to the employment relationship, not those aspects that pertain to the advancement of regular, daily affairs.

If we were to advertise a complaints-driven system throughout the client groups that suffer discrimination, we wouldn't just have this relatively small number of complaints. If a government was serious about wanting to advance human rights, we would see billboards saying: "If your rights have been violated, file a complaint. We promote human rights advancement. File a complaint." We would be financing and promoting clinics. We would be creating non-lawyer advocates, not unlike those we've now created in the context of the Advocacy Act. If we were serious, we would be engaged.

This process is a reactive process. You come, as legislators, and you decide to look into this mess, and a little bit of it gets exposed to you. There is an acknowledgement that the mess is real. We ought to applaud the commissioner for recognizing that the mess is real, but she can only deal with the tools she has. She can only deal with the law as you have given it to her and she can only deal with the funds you allocate to her. If you give her bad law and you give her inadequate financing, you should not be surprised that the client groups are unhappy. And you cannot claim, if the client groups are unhappy, that your role is the advancement of human rights. You cannot claim it here, you cannot claim it in the Legislature, you cannot claim it on the hustings, because you will not be believed by the client groups who suffer discrimination.

How can a trade union be helpful? We forced our way into the employment equity process. We insisted and

advocated that employment equity plans should be negotiated in unionized workplaces. We claimed that we would be the vehicle to achieve employment equity in the unionized workplace. That's what we claimed. We want to participate in the process in the workplace.

We have no claim to participate in the process when it comes to the Toronto Transit Commission finally, in 1993, obtaining equipment that will permit persons in wheelchairs to use the transit system. We cannot claim expertise when it comes to accessing public parking lots. We have a limited role. Collective bargaining, as experts in the field have recognized—and I agree with their conclusions—can only go so far in the advancement of human rights. The minority who suffer discrimination cannot expect their narrow interests, their personal interests, to win in the majority vote that ratifies a collective agreement. They cannot expect it to happen. You should not expect it to happen. It will not happen. That's why legislation is the key.

"We are available to be used for access and for outreach and for education." Are we? No. We engage virtually independently and without any sources of support from the commission or the government in the advancement of the human rights issues we try to bring to the workplace.

Why? Why is it that trade unions and other institutions that reach deep into the population are not the partners of the Human Rights Commission, are not brought in to participate in the development of programming, are not viewed as the vehicle for delivery, as a delivery mechanism? I don't know. Certainly not because we are unwilling. To those who claim that working for change from the inside out is adequate, we cannot fully agree. We think working for change of the human rights system from the inside of the commission out fails to remember that the population is outside. There has to be more integration, more consultation, more consultation, more involvement.

What can this committee do? Well, we know what the opposition is going to do. The opposition will say that the human rights system, since September 1990, is on its way downhill. They will say that not one person came before this committee and said a nice thing about the Human Rights Commission. They will say that any word by the government that suggests that the government is advancing human rights is a failure, is a lie, is misleading. That's what they will say.

The government will respond with the Employment Equity Act, the Advocacy Act, this act and that act. But when push comes to shove—and push should come to shove before the fall of 1995 or the spring of 1995—we have to look to the Human Rights Code and what we've done to change it.

Ms Witmer asks the earlier witness, "What is systemic discrimination? What is it?" as if it is something we can either want to alleviate or maybe we won't, as if we have some choice. Maybe we shouldn't be concerned with systemic discrimination; maybe it just sort of happens.

The Supreme Court of Canada tells us: "It really doesn't matter what you say in your Human Rights Code. Adverse-effect discrimination is unlawful in Canada."

Period. The end of the story. You cannot have adverse-effect discrimination. If your policies cause an adverse effect even though you intended it not to be adverse, it is unlawful, period. That's a departure from North American law; that's a departure from US law. How have Americans moved? They've moved to things like the Americans with Disabilities Act, regulations that promote and advance in a coherent way the alleviation and removal of barriers for the disabled.

It's too late for us to start at the drawing board now. This is not the time to start and reopen the Human Rights Code. We've moved far along with the Cornish report. We have to open it. We have to select from it those aspects of change that will make a real difference. Few people will stand up and say, "We want to defend discriminatory conduct." Many believe it, but few will stand up and say it. Few will stand up and say it in your Legislature. Few will come forward in front of the Legislature and yap about it. It is unpopular, unseemly, it's not to be done. As a result, there will not and cannot be substantial opposition to significant change in the human rights field.

Most Ontarians agree with the consensus of values that says we should have effective non-discrimination systems. Most look to the government for leadership in making it happen. The Steelworkers look to the government to make it happen as well. We look to the opposition for supporting it. We look to all of you for assuming your share of responsibility for the failures to date.

1230

We know some very controversial pieces of legislation come before your House, people get very upset, and three weeks later they're law. We don't have to name any specific recent pieces of legislation that have created enormous divisions within Ontario and the impact on a million employees in the public service to focus our minds on how a determined government can act with determination. We know it's possible. We can completely reshape the wage packages of tens of thousands of people, notwithstanding other obligations that one might have recognized, even though many, many people are upset.

So to those who say to you, "We can't open up the Human Rights Code, it's like opening up a barrel of worms; things would just come out of it; it'll be a big, huge mess; people will come forward, we'll have to study it, red papers, white papers, green papers; we just can't do it; the legislative process is so complex and difficult," we say hogwash. We know you can do it. You have shown your capacity to do it. You have shown your determination when you are determined. We think that the role of this committee is to trigger and kickstart that determination, because if you leave it in the hands of those who currently sit on the determination, we will be through an election campaign, with a new and different group of actors from whichever party may succeed before we kickstart human rights reform.

Those are the comments of the Steelworkers, and I'd be very happy to respond to any questions any of you may have.

Mr Marchese: Your presentation is quite clear. I was about to ask, as I did to Mr Baker earlier, about whether

you think we can reform the system, as they've been trying to do, or suggest even other ways to make it more effective, or whether we should be overhauling it. Your views are quite clear that we should be overhauling the system, obviously. You said we should open the code and select changes that will make a difference and just do it.

From the Cornish report, and you probably have much better memory than me even leafing through it, in terms of the Equality Rights Tribunal, a revitalized commission to be known as Human Rights Ontario, equality rights centres, an Equality Services Board, are those things you would support being part of a new code, or some of those, or are there additions you would make?

Mr Shell: The Cornish report is a comprehensive document. There are things about it we think are terrific, and there are things about it we think are overreaching, and there are things about it that we think won't work. For example, as to the concept of a supertribunal, just to give one, we don't think you need a supertribunal. We think a supertribunal will create a much larger bureaucracy than we need. It does not seem to make sense to us that a supertribunal will be advancing anything except creating a supertribunal.

What is critical about the Cornish report is (a) it provides regional non-lawyers available to people who need advocacy skills, and (b) it creates a system of expeditious dispute resolution, and I don't mean expeditious dispute resolution over the course of 18 months.

As you know, when a union organizes a workplace and the employer decides to fire the union organizer—I know it's hard to believe this happens, but the labour relations board reports are filled with examples of it. Right now in Ontario when it happens—and it happens all the time, and we complain about it all the time—the union files a complaint, and 21 days later it's before a three-person expert tribunal. That's if the union doesn't seek interim expedited relief, in which case it's before the tribunal on affidavits in 48 hours.

All I can say to you is, if it's good enough for a union seeking to organize, it's good enough for a man or woman in Ontario seeking to advance their rights. It really isn't more complicated than that. If the labour relations board, with reasonably limited resources, without a regional system, is capable of handling thousands of complaints per year, then we need something that's three times the size of the labour board, that is regionalized across Ontario, that has skilled and committed advocates working in the system with adjudicators if necessary and mediators and conciliators, and a system of dispute resolution so we don't go before the board in three weeks but we go before the board in six weeks or eight weeks. But we're talking about weeks, not months—weeks.

In so far as the Cornish report puts in place a system that would resolve the backlog and give people the understanding that they really do have the capacity to bring the offending party to answer for their offence, and one that is fair, that allows the alleged offending party to defend fully and respond, all at the public's expense, because the question of discrimination is a public issue, not a private issue, in so far as the Cornish report pro-

motes that, we support it. In so far as the Cornish report creates places for various high-paid bureaucrats to relocate in a new, reformed bureaucracy, one has to look at it and see if it would really work.

We don't think, for example, that the new Employment Equity Tribunal should be married to the human rights process. We think the Employment Equity Tribunal is going to have a lot on its plate in the next several years just to figure its way through and help the parties achieve employment equity plans. We don't think what you do to the Employment Equity Tribunal is dump on it the 15,000 human rights complaints per year that are going to have to be managed and then look at it and say, "You haven't been very successful, Employment Equity Tribunal," because its response will be, "Look what you gave us." It doesn't seem to make sense. Give people enough so that they can chew, not so that they choke.

With respect to the balance of the Cornish report, our views on the Cornish report have never been sought. Nobody has ever come and said: "Trade unions, public, equity-seeking groups, government, business, what do you think of the Cornish report? What do you like about it? What don't you like about it? Tell us."

Mr Curling: I know you came in yesterday as we were just about to leave. You have made a second attempt and I am glad you did, because you have made some rather important points, maybe hard to take, but it's the reality. Human rights is a serious issue and we as legislators must be committed to that cause. Dr Ubale mentioned that: Ask yourself the question of whether you are. If you are not committed to human rights, we will not resolve the problem we have.

My question is extremely easy to ask. I don't know how easy it is to answer. Today alone, we have had about five presentations that have said almost the same thing: that we must look at the systemic nature of discrimination, that we can develop the bureaucracy to deal with the individual complaints while we look at the other, universal part of systemic discrimination. What is it that you think is stopping each successive government from acting, having all realized that yes, maybe the approach first is to look at systemic discrimination?

Mr Shell: I have thought of that. In fact, yesterday as I was rushing here—unsuccessfully—to be on time, I thought of that problem. It must be that I've never been in the Oval Office and I've never had the competing demands on my time that legislators who manage the government of Ontario and the pressures on the resources must experience.

It may be that the disabled and discriminated communities don't have adequate voice electorally. That may be. It may be that they are not organized electorally to make you care. That may be. Or it may be to some extent that the most vulnerable people in our society are indeed the most legislatively weak. There are no huge organizations such as the Steelworkers union or OPSEU or the CAW with tens of thousands of members and huge staffs independent of government who can come forward persistently and make demands on human rights laws the

way, for example, the Steelworkers union will persistently make demands on occupational health and safety—relentless demands, non-stop, weekly—or on the workers' compensation system or on labour law reform or in the arbitration system, things that go to the heart of their institutional interests.

There are no institutions representing the discriminated minorities except the discriminated minorities themselves, and they are relatively weak, not terribly well funded, not always very skilled organizations. That may be one of the reasons.

Or, more profoundly, the reason is that we are not committed to the advancement of non-discrimination in Ontario, that we want a gloss. We want to have a nice little sweet 1980 Human Rights Code—very nice, it looks very nice, it says very nice things. Let me tell you, the substance of the code is really quite far-reaching. I've had occasion to talk with academics in Britain and we've gone through our Human Rights Code, and they are flabbergasted about the content of the reforms, largely attributable to the former government of Bill Davis. It is a very impressive document. But when we talk more about how to manage the management of human rights, we just fall all over ourselves.

Is it possible that we want to have a gloss of human rights but we don't really want to have an implementation system, that there are some groups, perhaps employers, landlords, owners of parking lots, who don't mind if you have a Human Rights Code: "But, by golly, don't make it enforceable against me? It's okay to have a code. That's all right. But don't bring it to my table and make me change how I behave by operation of a state regulatory system."

It may be that there is a quiet resistance on the part of contributors to political organizations, taxpayers and other self-interested groups, some of which may be trade unions. I do not think this is, so to speak, all brown and yellow or black and white. There is no right and wrong, good and bad in this. It's hard to know. But from the perspective I'm in as a trade union lawyer, as an administrative lawyer, as a parent, as a person who has a disabled child, I can only come to the conclusion that you're not serious.

Mr Curling: Maybe the way government is organized is systemically dysfunctional. As you said, as we put in the system and bring it forward, each government, each party of the day, has tried and is committed. I don't see any colleague over there who I would regard as not being committed to human rights; neither with the Conservatives. All are committed. Maybe it goes beyond that, to look at the structure of government and the way the system is done so we can put forward the kind of changes that they all spoke about today.

The Chair: We are out of time. Thank you for your appearance and contribution to the committee hearings today, Mr Shell, and I thank the committee members for a productive and cooperative week. We'll see you on Monday afternoon at 2.

The committee adjourned at 1244.

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**Standing committee on
government agencies**



**Comité permanent des
organismes gouvernementaux**

Ontario Human Rights Commission

**Commission ontarienne
des droits de la personne**

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Monday 7 February 1994

The committee met at 1401 in the Trent Room, Macdonald Block, Toronto.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mrs Margaret Marland): I call this meeting to order, as we continue the review of the operations of the Ontario Human Rights Commission. We have five deputations this afternoon.

WEI FU

The Chair: We will start with Mr Fu, who is a journalist with the Chinese World Journal. We welcome you to the committee, Mr Fu, and the next half-hour is yours and you can use it however you wish. Make your presentation, and if you would like to leave time for the committee members to ask you questions they would appreciate that, I know.

Mr Wei Fu: Before I read my presentation I'd like to tell you I appreciate this opportunity. Inviting a community person, a former complainant of the Ontario Human Rights Commission, to make a presentation shows that the standing committee is really making an effort to improve the protection of human rights in this province.

I'd also like to tell you that when you are making an effort to do this you win the support of the entire minority community. Many, many people appreciate, but today is a working day so people cannot show up.

I'll start by reading a short presentation.

Preface: Ontario, the dreamland of people from all parts of the world, respects the rights of everyone. The first nine sections of the Ontario Human Rights Code are a solemn declaration of Ontario's sacred intent, but this intent has been undermined by the agency which is set up to uphold human rights, namely, the Ontario Human Rights Commission. In the minority community it is said that the OHRC gives victims of racism only false anticipations. It is also said that this agency is wasteful multi-million-dollar window dressing. A radical statement says that the OHRC is a grand conspiracy, it whitewashes racism, and in the meantime portrays the image of upholding rights. One may repudiate these versions as frustrated persons' misperceptions. One may also argue that if so many people are frustrated with the OHRC, the need of a review is obvious.

The OHRC format of protecting rights:

(1) The complaint: When a victim of racism files a complaint to the OHRC, he or she will firstly meet a receiving officer who often does not have a sympathetic attitude. He or she may face hostile questions and sometimes be told that it is a waste of time. After this rather intensified interview, the receiving officer will draft a complaint statement for the complainant or help him or her to write one. The statement will then be sent to the respondent.

The OHRC claims to be a neutral authority. The complainant and the respondent have the same legal

rights. In the case that the complainant is an employee of a large corporation or powerful institution, this first step has already put him or her in a disadvantaged position.

Few people in a high position would admit that racism is a problem in their workplace. It would be naïve to expect that after receiving a notice from the OHRC, the employer would neither destroy documents nor manipulate witnesses. Promotion, assignment, overtime payment etc are the handy means to reward those who do not rock the boat. There are hundreds of ways to punish those who have crossed the line. The sad fact is that manipulation often works.

(2) Investigation: While the employer is well prepared, a human rights officer will begin the investigation. It is often conducted by phone; sometimes by interview. It is reported that the questions an investigator poses to the witnesses are decided by the supervisors.

Subsection 32(2) of the code gives the OHRC the power to initiate a complaint and to investigate. Section 33 gives the human rights officer the power of entry, search and seizure with warrant. These legitimate measures are rarely used.

Some former employees of the OHRC allege that the management blames the officers' lack of skill and knowledge for unsatisfactory investigations, while the officers complain their hands are tied and their findings are sometimes altered by superiors. Both the management and the staff members contend that the law is so weak that the OHRC lacks the power to do its job.

The question then remains why they are reluctant to use the legislated power which is already in the book. Furthermore, the code does not state the OHRC cannot use undercover methods to carry out an investigation. Moreover, the code does not set the aforementioned format of investigation for the OHRC either. The truth, perhaps, is that the OHRC as a whole lacks the willingness to enforce the code.

(3) Conciliation: At this stage, the complainant and the respondent are brought together to settle the differences. The complainant, who is always the underdog, usually attends the meeting with a friend and a community worker or perhaps a community lawyer. The respondent is most likely flanked by high-profile legal counsel and assistants. An employee has to gather the courage to confront his or her boss in a settlement meeting. The underdog, who is already under severe pressure, may then be told by the mediating officer that refusal to settle can be used as grounds for dismissal. The reached settlement may be some empty statements and a letter of apology. In some extreme cases, there might be a few thousand dollars' compensation.

(4) The board of inquiry or dismissal: Failing to reach a settlement, a complaint may either go to the board of inquiry or be dismissed. For years, only about 2% of the complaints were inquired into by a board. Now the

OHRC claims that the rate has been increased. However, sound cases are still dismissed by the OHRC or by the board of inquiry.

There have been instances where the chairman of the board is insensitive to the pain of a minority worker but very understanding of the difficulties of the employer. For example, the board of inquiry may abandon the principle of balance and look for overwhelming evidence without doubt. The OHRC, confined by its own format of investigation, cannot locate this kind of hard evidence.

1410

After a long, frustrating journey, an extremely small percentage of complainants may be fortunate enough to win a decision in a board of inquiry. For the respondent, it is not more than a slap on the wrist: an apology, a few dollars, or perhaps a job for the complainant. However, the respondent can prolong the legal battle by going to Divisional Court, the Court of Appeal, or even the Supreme Court of Canada.

Overall shortcomings of the OHRC:

(1) Insensitivity towards the victims: The entire process—complaint, investigation, conciliation, board of inquiry—lacks sensitivity to the pain of victims. There are reports of human rights officers and chairpersons of the board acting rudely to complainants. Going through the process, many victims are further victimized.

(2) The human rights officers' lack of independence: While crown attorneys enjoy independence in investigation and prosecution, human rights officers do not have the same privilege.

A recent decision of the grievance settlement board of Ontario crown employees found the OHRC and the Ministry of Citizenship unfair in hiring. Merit is not the only factor that decides the success or failure of an applicant. Many human rights officers begin their career as contract employees. It is alleged that they are promoted when their behaviour pattern is found to be consistent with the existing subculture. One of their former chief commissioners has mentioned interference from the minister.

(3) The process creates different interpretations even within the commission. Different human rights officers handle a complaint when it goes through different stages. Each officer's version may not be the same. The different versions of the same case pass on to superiors in the decision-making process, thereby creating further confusion.

(4) Inability to find hard evidence: Discrimination and harassment are difficult to be proven in court. Retaliation is even more difficult to prove. The OHRC sets up a pattern for investigations. This pattern serves only to confine itself and reduce its ability to do its intended job.

(5) The system does not pose as a deterrent to racists. Racists know that when they violate the Ontario Human Rights Code they are most likely home free and can escape without any consequences. Even if they are caught, no punishment of a severe nature will occur.

(6) The OHRC further victimizes victims. While the OHRC lacks the willingness to enforce the code, its insensitive process has further victimized many victims.

I have personally witnessed the emotional, mental and physical breakdowns of victims due to the constant stress.

Recommendations:

(1) Crown attorneys enforce the code: Perhaps the most persuasive argument which serves to protect the Ontario Human Rights Commission is not that this institution performs its mandate adequately, but that the crown attorneys and judges are not sensitive to the feelings of victims of racism. This sensitivity cannot be detected from the human rights officers and the chairpersons of the board of inquiry either. Besides, if the crown attorneys can prosecute fishing, traffic and other provincial offences, there's no reason they cannot prosecute human rights offences.

Therefore, I respectfully recommend the province put the Ministry of the Attorney General in charge of the investigation and of the prosecution of human rights offences. This change would bring more respect to the Ontario Human Rights Code and more authority to the enforcement of the code. Once this change is done racists can no longer take the Ontario Human Rights Code lightly. They will realize that if they violate another person's human rights they cannot escape the consequences.

(2) Completely dismantle the Ontario Human Rights Commission and set up a \$15-million fund to help victims seeking justice in court. For 10 years I've been calling for the reform of the Ontario Human Rights Commission. Each time a new chief commissioner has been appointed new hope is put on that person. Unfortunately, this hope always becomes disappointment. The fact is, this institution is rotten to its core. Reform is impossible.

The complete dismantling of this institution would only benefit the cause of human rights. The Ontario Human Rights Commission does not work. If racism is like cancer the OHRC is the wrong medicine to treat the disease. This wrong medicine has to be replaced because racism is on the rise. The situation is turning from bad to worse.

To dismantle the OHRC, Ontario will save about \$15 million a year. This amount of money can be put to good use. I respectfully recommend the appropriation of a \$15-million fund to help victims of discrimination to seek justice in court. As it is now, the victim has only a few deadend choices that invariably lead to frustration. If there is a strong backing of a public fund a victim would have the choice of hiring a trustworthy lawyer to help him or her in seeking justice.

(3) Rewrite the law enforcement section of the Ontario Human Rights Code. If there is a perfect piece of law in the world it is part I, the first nine sections of the Ontario Human Rights Code. Part II, "Interpretation and Application," is also noteworthy. However, the code is damaged by the remaining three parts, the parts regarding enforcement. Without proper enforcement the code is only made to be seen, not to be respected. Few people would argue that to maintain safety on highways the authority can overlook the law enforcement of the Highway Traffic Act and stress public education. However, when talking about the protection of human rights many people would say

that law enforcement is not important. The priority is public education. It is my view that the respect of the Ontario Human Rights Code can be achieved by having public education and law enforcement working hand in hand.

I respectfully call upon the Ontario Legislative Assembly to rewrite the law enforcement section of the Ontario Human Rights Code. May it give the right direction for this generation and future generations.

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Mr Alvin Curling (Scarborough North): Thank you for your presentation. You have been an ardent individual who has worked towards human rights in this province for a long time and continue to do the work you do and you do it well.

Some of the things that you reflect in your presentation are things that we have been hearing from time to time. Because we only have four minutes I'm going to ask you some very, very short questions and you take the liberty wherever you feel.

The Mary Cornish report has a number of recommendations in it. Overall, how do you feel about the recommendation that asks specifically for more independence from the government?

Mr Fu: I don't agree with the report. I think that report changed one revolving door into three revolving doors. It gives victims even more frustrations. But I do think there needs to be an independent body to enforce the Ontario Human Rights Code, the first nine sections of the code.

Mr Curling: The other part that concerns us and concerns my party is that the Human Rights Commission seems to fall into what they call the backlog, all these cases have been sort of stuck for years and people are not hearing their cases for three or four years in some instances. How do you feel they should approach that? They have tried. The Human Rights Commission came before us and called it small miracles, a little bit of miracles. I tell them, give me \$6 million and I could show you some great miracles. The fact is that this amount of money somehow puts some effort behind eliminating or reducing that backlog. What is your perspective of this backlog and what impact do you think it has on a community that expects justice from a commission like this?

Mr Fu: It encourages racism. I think the OHRC is luck of the wheel to protect human rights. There are cases that have been there 10 years. They just don't want to touch it. From some inside study which has been released recently, inside the OHRC cases are closed for office politics. When the commission wants to favour a manager or favour a human rights officer it gives the human rights officers easy cases and then it closes cases for no good reason, just to accommodate a manager it favours.

Mr Curling: The Ontario Human Rights Commission should be a commission in which to address systemic racism. As you said, it's like a cancer; you've got to get to the core of it. Racism or discrimination or injustice in human rights usually is based in the systemic manner in how things are being done in policies.

Do you feel that the Human Rights Commission is doing even a fair job in regard to systemic discrimination? I know that the federal government's human rights doesn't address that systemic policy area. How effectively do you feel that the systemic unit in the Human Rights Commission is working?

Mr Fu: It doesn't do anything. It doesn't do anything to discourage racists not to harass or discriminate against minorities. It doesn't do anything at all.

Mr Allan K. McLean (Simcoe East): On page 4 of your brief you indicate that: "Many human rights officers begin their career as contract employees. It is alleged that they are promoted when their behaviour pattern is found to be consistent with the existing subculture." What do you mean by "subculture"?

Mr Fu: The subculture is what I have put down today. The subculture is talking about human rights and actually not really protecting human rights, talking about racism and actually not really fighting racism. It's a waste of \$15 million of taxpayers' money.

Mr McLean: "One of their former chief commissioners has mentioned interference from the minister." What commissioner was that and which minister was that?

Mr Fu: I gave it some thought when I put down this statement. I appreciate today's opportunity so I told myself I have to put down what I honestly feel and what I honestly witnessed. But I approached that person as a journalist. I have my ethics. If someone takes me to court I would tell a judge the person's name and the circumstances under which I got this piece of information.

Mr McLean: But you're not going to tell us today.

Mr Fu: I cannot, I'm sorry. The purpose is not to destroy any individual or to cause a political scandal, but it's an honest statement.

Mr McLean: Is the minister one of the recent ministers?

Mr Fu: I don't want to elaborate.

Mr McLean: Okay, thank you.

Mrs Elizabeth Witmer (Waterloo North): You've suggested here that we dismantle the commission and the money can be used to help the victims. Then I guess you're suggesting that crown attorneys enforce the code.

Mr Fu: Yes.

Mrs Witmer: How realistic do think that proposal is? Why would the crown attorneys be any more effective in dealing with the cases?

Mr Fu: First of all, right now the Ontario Human Rights Code is a joke. You see racism, racial harassment, discrimination everywhere. When people do harass others, do discriminate against others, they don't have a second thought. They know the Ontario Human Rights Code is a joke. They won't get any consequences. Even if they get caught there'll be no more than a slap on the wrist. They know that human rights officers lack willingness to enforce the code.

If we put crown attorneys to do the job, the immediate result would be the prestige. It means Ontario in future means business when it confronts racism. If crown

attorneys can prosecute fishing offences, can prosecute traffic offences, there's no reason they cannot prosecute human rights offences.

Mrs Witmer: Where are these offences occurring most often, do you believe?

Mr Fu: It's all over. People call me late in the night and talk about their sad experiences. I've seen people go mentally ill and from mentally ill to developing physical sickness. It's sad, sad and all over.

My personal impression is that in the public sector racism is worse than in the private sector. In the private sector the employer demands efficiency for its own survival but in the public sector it's a different story: all over.

Ms Jenny Carter (Peterborough): We are all concerned to see that racism be overcome in this province and that human rights should be enforced. We are looking for the best way to do this, and considerable effort is being made right now to reform the Human Rights Commission from inside. I tend to have a rather more optimistic view than you do as to how possible that is.

Like Mrs Witmer I'm wondering about your suggestion that cases should go through the regular court system, because the regular courts too can get overloaded. I seem to remember that there was a large backlog and we had something called the Askov decision and a large number of cases were in fact dumped because the backlog was just piling up too much.

I'm just wondering how you would see the regular system coping with the huge influx of new cases that would result from your solution to this problem.

1430

Mr Fu: First of all, the backlog of the Ontario Human Rights Commission is not because of a heavy duty or too many cases, because that commission does not help victims. It doesn't have the will to fight racism.

On the other hand, once I caught a fish at the wrong spot. There were permanent fishing sanctuaries; there were temporary fishing sanctuaries. I always know which area is a permanent fishing sanctuary. I overlooked a couple of months the other side of the lake; this is a temporary fishing sanctuary. I was caught. The policeman took my fishing gear and gave me a summons. I was impressed, because there is a section of the fishing regulation I violated. I was taken to the court within six months. The prosecutor and the judge were all serious. I was pleased, because then I know natural resources are well protected.

But in terms of human rights offences, it's a totally different story, as I mentioned in my presentation. It's a totally different story. The offenders know they're home free.

I don't think the backlog in the court is as heavy as the backlog in the OHRC, and I don't think the backlog in the OHRC will be ever improved. I doubt the new commissioner's measures would improve its efficiency. It is my view that that commission is rotten to its core. A recent study reveals some human rights officers called the OHRC a racist institution.

The Chair: Mr Marchese, 30 seconds.

Mr Rosario Marchese (Fort York): For 30 seconds, it's not worth asking a question.

The Chair: All right. Thank you very much, Mr Fu, for your appearance and your contribution before the committee this afternoon.

Mr Fu: Thank you, Madam Chair and honourable members of this committee. I really appreciate this opportunity.

LOU RONSON

KAREN MOCK

The Chair: Our next deputation is Mr Lou Ronson, who is the former vice-chair of the Ontario Human Rights Commission and past national chair of the League for Human Rights of B'nai Brith; and also Dr Karen Mock, former national director of the League for Human Rights of B'nai Brith. Welcome, Dr Mock and Mr Ronson. The next half-hour is yours.

Mr Lou Ronson: Madam Chair, just a correction, if I may. Dr Mock is the current national director of the league for human rights.

The Chair: I'm sorry. The note on here said former. We'll correct that to current.

Welcome. You can use the next half-hour as you wish. If you can leave time for the committee members to ask questions, that works well, too. Please go ahead.

Mr Ronson: Madam Chair and honourable members of the committee, my name is Lou Ronson, as you have heard, and I'm speaking to you today as a former vice-chair of the Ontario Human Rights Commission, the founder and past national chair of the League for Human Rights of B'nai Brith, and the past national co-chair of the Canadian Council of Christians and Jews. For over six decades I have served nationally and internationally in various advocacy roles on human rights issues, especially those related to racism, anti-Semitism and religious bigotry.

In those early years, the dehumanization of minorities was quite fashionable and discrimination was rampant in every aspect of society: social, professional, commercial, academic, throughout the public and private sectors. But we have come a long, long way since then and behavioural patterns as well as attitudes have improved dramatically in the past 25 years, for which credit must be due to the enactment of the Human Rights Code in 1962 and the consequent establishment of the Ontario Human Rights Commission.

Do I therefore feel that our battle for the dignity, equality and freedom from discrimination for all Ontarians is almost won? Not by a long shot. There is much yet to be accomplished, but I do believe our cup is half full and not half empty.

For a number of years, the pioneer commissions did exemplary work in rooting out discriminatory practices and enforcing the code. They handled their modest case load well. The Ontario Human Rights Code became a model for many jurisdictions in North America.

In 1981 the Human Rights Code was upgraded to provide, inter alia, protection for individuals with disabil-

ities, which cases now comprise about one third of the commission's entire case load, representing by far the largest of its 15 statistical classifications. In 1984 and 1986, new amendments were introduced, further broadening code coverage.

By this time, the commission was being flooded with an inflow of complaints far in excess of its capacity to cope considering the resources then available to it. Adequate budgets were not forthcoming and soon the backlog began to assume formidable proportions, accompanied by growing criticism from the public and the media. This is amply illustrated by the attached statistical exhibit. This adverse condition still exists today, resulting in a diminution of credibility which in itself is damaging to the work of staff and their morale.

The current administration has worked assiduously to streamline procedures and to improve the efficiency and effectiveness of the organization as a whole, with considerable success. But they cannot achieve what is unachievable with the inadequate resources available to them. It is totally unacceptable in my view to have several hundred human rights cases lingering for three years or more in the case load. It is equally unacceptable to carry a backlog which on the average could take a year or more to resolve.

I know that at this time of financial constraint it is not realistic to expect a commission budget to adequately fund the resources needed to resolve the problems I have mentioned. Probably there never will be sufficient funds available because, ironically, the greater the credibility and effectiveness in case management achieved by the commission, the greater will be the inflow of complaints, until that hopeful point in time when case shrinkage will begin to occur because of a more enlightened society.

All of which brings me to the conclusion that it's time to do a pragmatic legislative tuneup of the Human Rights Code. In my view, it is unnecessary and unproductive for all 10 commissioners to study, discuss and pass judgement on a majority of the cases that come before them after each case has been documented and reviewed by several levels of professional as well as legal staff. It is a painfully slow and ponderous process.

I would propose that the equivalent of a Small Claims Court be established with no more than three full-time commissioners sitting as a tribunal on a daily basis to adjudicate selected cases of lesser importance to the public interest. Such cases would not consume the considerable amount of time now spent on stale investigations of old cases by investigators as well as other members of staff, who are all in short supply. The complainant and respondent would be required to appear before the tribunal with witnesses and counsel, if any. Counsel for the complainant would be provided, as now, by the commission. Summary judgement would then be rendered on the basis of provided evidence and/or credibility.

This would produce a fast-track solution for the many relatively minor cases before they build up severe emotional resentment and even prove to be insoluble because it is too late to effect an achievable remedy. Such a procedure would remove a considerable load from the

commission and its staff, allowing them to focus on the more difficult and complicated cases, which often have a major impact on the general public interest. More time would also become available to address and investigate cases of systemic discrimination, where the greatest amount of good can be achieved for the greatest number of people and society as a whole.

1440

In my experience, a considerable amount of systemic discrimination occurs unknowingly through ignorance and without deliberate or malicious intent. This often invites an educational response. So for the second part of this presentation, I would like to introduce Dr Karen Mock, who has special expertise in human rights education. She has developed and taught courses in multicultural, anti-racist education and has published widely on resources for young children and access to government services by minority groups, as well as teacher education and policy development on these and related issues. She is currently the national director of the League for Human Rights of B'nai Brith Canada and also serves as chair of the Canadian Multiculturalism Advisory Committee, the advisory body to the secretary of state for multiculturalism and race relations.

Dr Karen Mock: As many members of the committee are aware, the League for Human Rights of B'nai Brith Canada is a community-based volunteer organization dedicated to combating racism and bigotry and to promoting human rights for all Canadians. Therefore, I was very pleased when Mr Ronson invited me to participate in the presentation today and I jumped at the chance to appear before the standing committee.

Time does not allow my describing thoroughly the league's proposed changes to the code itself and to the implementation of the code. These have been elaborated publicly at the Ontario Human Rights Code Review Task Force in April 1992 and at a commission press conference in June 1993, summaries of which have been attached to our written submission for those committee members who may wish to review them.

At this time I would like to comment only briefly on the potential for community contribution to the timeliness and effectiveness of case management and then focus the remainder and the bulk of my remarks on strategies for public education and advocacy, also with an emphasis on community participation and partnership.

Although there has been some progress made in case management, it has been our experience that many individuals with legitimate complaints are still afraid to initiate an official complaint with the commission because of their perception that the process is both inefficient and ineffective and possibly even detrimental to their interests. Potential complainants are left with only internal procedures in their own organizations that are at best inadequate, often fraught with systemic barriers, and at worst may even be corrupt, leading to further victimization of the complainant with no protection.

We look to those with case management expertise, such as Mr Ronson, to recommend effective streamlining strategies. But at a time of declining resources, the commission might make more effective use of existing

community organizations: first, by giving them better access to the process by granting them standing to advocate on behalf of deserving complainants and/or allowing third-party intervention and, secondly, by offering support to community organizations wherever appropriate when services are rendered to complainants, respondents or even the commission itself.

Community organizations with human rights expertise can and do assist by serving a first-line screening function to advise potential complainants on the merits of their case. They can provide their research on and expertise with certain kinds of cases or issues and can serve as a support for aggrieved community members who may feel further victimized by an impersonal, lengthy and confusing bureaucratic procedure. Community agencies can serve in an advisory capacity to the client as well as to the commission, thereby creating greater equity in access to information and also saving time for the commission, particularly when staff turnover may result in a shorter corporate memory among case workers than in community agencies.

Building effective community partnerships, however, requires an ongoing relationship, not just a call for community input on a one-time basis for a task force or when a crisis occurs and the commission wants to know what role it can play. We are pleased that there has recently been outreach for community input and look forward to an ongoing cooperative relationship in service delivery, not a competitive one or even an exploitative one, as is sometimes the case with government agencies. However, we are concerned about the increased divisiveness among and between community groups that is often exacerbated by government when only lipservice is paid to community consultation or when groups are pitted against one another in competition for scarce resources. Government agencies must create more innovative models of community partnerships and cooperation.

Not only must the management of cases be timely, efficient and fair, as has been said by many others besides myself, but it must also be seen to be timely, efficient and fair, which brings me to the issue of public education and advocacy and more information getting out there to the community and to the public about expediting not only cases but about human rights themselves.

As Mr Ronson implied earlier, there is a tremendous need for the public both to understand and to learn to identify systemic discrimination, to avoid human rights infractions due to ignorance. Our workshops in both the public and private sectors reveal a lack of knowledge among employers and employees of both their rights and responsibilities, let alone what to do when there is a complaint.

We have also found many cases in which internal investigative skills are woefully inadequate, even in companies and agencies that have harassment policies, such that the very policies designed to redress systemic discrimination in practice may actually reinforce it.

Similarly, with the rise in white supremacy, right-wing thinking and rhetoric and the backlash against multiculturalism, race relations and immigration, we have found that the public is willing to accept the misleading

media hype on human rights issues and the related issues of employment equity, usually out of sheer ignorance. Reaction to the Donna Young report was a good example of this phenomenon.

Perhaps a more frightening example occurred more recently when we were called by a very concerned high school principal to work with a group of young people and their friends who were being drawn in by the Heritage Front and the Church of the Creator, two notorious white supremacy groups who recruit vulnerable targets with their attractive slogan "Equal rights for whites." These students were convinced that their human rights were being violated by the federal and provincial policies of employment equity, immigration and multiculturalism and even by their own school board's anti-racist initiatives and practice of recognizing a variety of religious customs and celebrations.

What became immediately clear, after a brief quiz, was that these teenagers knew virtually nothing about human rights and so were easily drawn in by the emotional manipulation and virulent hate propaganda of groups intent on violating the rights of others under the guise of preserving their own.

I must add that when I came in, I was very encouraged to see a draft document for schools and also the policy statement publications. We certainly are looking forward to reviewing these thoroughly.

It is our belief that the battle against racism and bigotry will ultimately be won through education, broadly defined. An effective public education campaign could include: public service announcements, advertisements, school curriculum at every level of the system from the earliest childhood level right to post-secondary, teacher education, management training, training of trainers in human resources, pamphlets, brochures, guides, guidelines, fact sheets, computer-assisted instruction techniques, computer bulletin boards, user-friendly reports on cases, effective publicity of cases, where appropriate, hotline/helpline, media briefings/education programs/articles, sector- and profession-specific instructions.

Dare I add that these are all the techniques that are being used by the hate groups to disseminate their information widely. I think we need to use many of the same techniques available to us, and I am sure there are many more creative ideas, with all of the above in consultation and partnership with both community organizations and the public and private institutions and agencies that have expertise and/or some jurisdiction in those areas.

But I have a word of caution similar to that I raised earlier when referring to community groups. With the expansion in government and in the community of equity organizations, advocacy and structures, including employment equity, anti-racism, multiculturalism, gay and lesbian rights, disability issues, women's issues, anti-poverty concerns and so on, there is an increasing tendency towards turf wars between and within departments, as needs increase and budgets decline. At this juncture in history, with the rise of racism, anti-Semitism and xenophobia, nationally and abroad, we cannot afford to be fighting within the family, neither with communities

nor within government. Every agency and organization must define its mandate in terms of what it does that no one else can or should do, which is also what it should do best, and then do it and cooperate with the others for the rest.

Let us all support the Human Rights Commission, all communities and all parties, to enforce the code through timely and efficient case management, but let us also all work together with the commission to educate all Ontarians on their rights and responsibilities under the code and to advocate for better human rights protection for all.

1450

Mr McLean: I have one question for you, Doctor. On page 7 you indicate partway down through the first paragraph, "and even by their school board's anti-racist initiatives and practice of recognizing a variety of religious customs and celebrations." Could you indicate to me what school board you're referring to there?

Dr Mock: I could mention the specific school board, but in fact every school board in the Metro area has anti-racist, multicultural policy.

Mr Marchese: Toronto, North York, various boards.

Dr Mock: Yes. They all do. I don't want to target that particular school.

Mr McLean: You said their school has anti-racist initiatives and practices.

Dr Mock: Yes. They have some very effective—

Mr McLean: And you're saying that all school boards have that?

Dr Mock: All school boards in Ontario have recently been mandated to create them. In the Metro area and in southern Ontario all school boards already have them. That particular school board was in the Halton region actually and had within that school effective multicultural, human rights, anti-racist policies operative. These young people thought that by those policies their human rights were being violated, which of course was absurd.

Mrs Witmer: You mention at the top of page 7, Dr Mock, "Similarly, with the rise in white supremacy, right-wing thinking and rhetoric..." I'm not quite sure what you mean by "right-wing thinking and rhetoric." It's the same page as Mr McLean referred to, page 7, at the top.

Dr Mock: I think in general we are experiencing, nationally and also abroad, an anti-immigration backlash, an anti-multiculturalism backlash, this kind of rhetoric that really verges in many ways on propaganda: the repetitive slogans, the half-truths, the stereotypes about even the kind of equality legislation that the Human Rights Code provides. When you hear that kind of thing often enough, when these kids hear, "Equal rights for whites," or "Human rights are really a violation of your rights," and so on and so on, this is what I'm calling rhetoric or a right-wing-verging-on-white-supremacy kind of extremism.

Mrs Witmer: I'm a little uncomfortable because I don't like to see us labelling things. We could say "left-wing thinking." I don't know what that is either.

Dr Mock: Okay. I take your point.

Mr McLean: Mr Ronson, you were vice-chair for some time of the Human Rights Commission. You heard the individual who was here before you express his very strong concerns with regard to the commission. What do you think of the expressions that he made?

Mr Ronson: When you've been a victim of discrimination you feel very strongly about it, and if you've had to wait for a year, two or three or whatever, to have your case resolved. Let us say for example that you've been turned down on an apartment because of racism or whatever the infraction might be. To get that apartment available to you a year from then is of no value, because it's already occupied. I've seen cases where finally the resolution of the case was that the landlord will have to make available the next vacant apartment to that complainant, who may or may not want it by the time it's available. There are many of these cases that just don't get solved because they're out of time, and this causes tremendous resentments.

Mr McLean: He thinks the commission should be totally done away with.

Mr Ronson: I heard that. That's a very extreme view.

Mr Marchese: I welcome you both to these hearings and I appreciated the comments you both had to make in this regard. Some quick things. The Toronto Board of Education had one of the best race relations policies I suspect in North America. They were developed in 1981-82. We discovered five years later, when the Hitner Starr report came out, that we hadn't implemented any of the 120 recommendations. Perhaps we had a few, but on the whole we didn't implement. So we failed in the arena of enforcement and monitoring. Good policies, we've discovered, mean nothing unless you enforce them and unless you have ongoing public monitoring of those good policies.

One can think of all the work that needs to be done to get anti-racist practices, and all the suggestions you made need to continue to happen across the country. Anti-racist policies, of course, have to be in place by all boards, but as I say, we need enforcement and monitoring.

Much of what you said had to do with systemic changes obviously in terms of how we change racist discriminatory attitudes that we have, sometimes well hidden, sometimes quite open. Are you in accord with what Ms Cornish's report had written about 18 months ago in terms of what we need to do with the Human Rights Code? Do you support those changes, or are there things you disagree with and some you agree with, or what?

Dr Mock: I'm certainly not in accord with the entire report. To describe in depth our reaction to each section of the report is really beyond the scope of this discussion.

Mr Marchese: Of course.

Dr Mock: On the question of serious implementation and rigorous addressing of systemic discrimination in every sector, you raised the Hitner Starr experience and the Toronto board experience. We learned a great deal from that. I was privileged to be able to do for the Ministry of Education a few years ago an overview of all of the equity, anti-racist and multicultural policies. Since

that time, when you examine which policies really seem to work and which ones don't, it's the ones that actually specify implementation and accountability right in the administrative procedures of the way an entire organization is operationalized.

To that end, we would certainly support any recommendations of a body like this that were in keeping with strengthening systemic units and the clout that they would have with employers in insisting that they not only understand but implement measures to remove the barriers to equality.

Mr Marchese: I wanted to raise a point that you had talked about in terms of third-party intervention. I had asked the commissioner the question of whether or not third-party intervention was possible. The commissioner replied that organizations could in fact represent complainants but such organizations, pursuant to the code, could not bring the complaint on behalf of the individual.

The lawyer representing the board said to add to this that those organizations, such as for example ARCH and CERA, often draft the complaint on behalf of the individual and continue to act as the complainant's representative throughout the investigation. These organizations reply to correspondence, coordinate the replies of the complainant to any questions asked by the officer and prepare the complainant's response to the case summary.

It appears that third-party intervention is there. Is that your understanding?

Dr Mock: That wouldn't exactly be an actual third-party intervention. That is a third party assisting as an advocate and working with the complainant. I guess we're looking at more something like what in the States might be called a friend of the court, or the third party itself bringing the complaint, where the onus doesn't always only rest on an individual, or to find the individual who has been aggrieved when in fact it may be an entire community that is aggrieved. We could look at third-party issues there, group defamation and so on.

Mr Curling: This half-full cup that we have here so far with the Human Rights Commission that we have progressed, as you said, Mr Ronson, does it concern you, the kind of lipservice or the minimum amount of effort that the Human Rights Commission is now doing in regard to addressing systemic discrimination, that basically the core of getting rid of these discriminatory practices and human rights injustice practices would be systemic, to look at it from a systemic point of view, and they are not doing sufficient? How do you feel about this, that they have done almost lipservice to systemic discrimination?

1500

Mr Ronson: I feel very strongly about that, in a negative fashion, and have felt that way all the six and a half years I actually served on the commission. I was always a proponent of putting greater emphasis on systemic discrimination and not consuming so much of our time and energy on the less important—every case of discrimination is important. It's certainly important to the individual; there's nothing more important. But when you have limited resources and limited time available, you

have to give attention to those things that require priority.

I could never seem to find that—you see, we always had great commissioners, great staff, a wonderful legal committee, and I imagine it still exists. But the sense of compassion takes over when you're looking at a case. Even though it may be a very small, unimportant case, relatively speaking—this is the way I mean it—you get drawn in. I don't think it takes 10 commissioners to pass judgement on the majority of these cases. I think there is room for streamlining—that's the whole basis of my brief—so that we can get at this, because we want to solve this problem of racism in society. We've got to get at systemic discrimination. That should be the main priority and most of the funds and resources that we have available to us should be spent in that direction.

Mr James J. Bradley (St Catharines): I'd like to go back to page 7, "this right-wing thinking and rhetoric and the backlash against multiculturalism, race relations and immigration. We have found the public is willing to accept the misleading media hype on human rights issues and the related issue of employment equity, usually out of sheer ignorance." I'm concerned about that because, whether I agree or disagree with those who express those views, we do live in a democracy. Isn't it becoming somewhat dangerous if we immediately label people who have different views—I'm not talking about the extreme right-wing types who use what every decent person would consider to be unacceptable, but that kind of statement on page 7 certainly, in my view, provides fuel to those who are resentful of the Human Rights Commission and to proponents of multiculturalism, race relations, immigration and employment equity and human rights issues, when we simply label those people and the views expressed in opposition to those policies as being unacceptable. Isn't it a danger that this kind of statement is going to precipitate even more anti-Human Rights Commission dislike and give ammunition to those who are opposed to what you stand for?

Dr Mock: What I was suggesting here was that it was the ignorance of the public that made them vulnerable to believing those views or to merely accepting. Just as you said yourself, you may not disagree with these views that are accepted. It's not those views, necessarily, that I'm labelling, but rather the sheer ignorance of the population that is receiving them, because we haven't done a good enough job, all of us, in communicating to them what the Human Rights Code is really all about or in simple enough terms that people will understand that no, their rights are not being violated, no, they don't have to accept what they read, the inflammatory backlash type of motivated responses that they read, if they have the information at hand, if they have the facts at hand, if they have, I guess, what the educators call the cognitive support for being able to evaluate what they read. Then they can decide whether to believe it or not.

Mr Bradley: Do you have an—

The Chair: I'm sorry, we're out of time. Again, our appreciation to you, Dr Mock, and to Mr Ronson for your appearance this afternoon.

Mr Ronson: Thank you for the opportunity.

The Chair: We're glad that you were here.

RUSSELL JURIANSZ

The Chair: Our next presenter is Mr Russell Juriansz of Blake Cassels and Graydon, barristers and solicitors. Mr Juriansz is a former director of the Canadian Human Rights Commission. Welcome to the committee, Mr Juriansz. Is that information correct?

Mr Russell Juriansz: Not quite.

The Chair: I wondered. I noticed you were making a face. I'm reading off our agenda here, so maybe you could correct us, and you have the next 30 minutes.

Mr Juriansz: I'm not sure whether I should sit at the right desk or the left desk after the discussion we've had. I am pleased to be here and to participate in your important work. I regret I haven't had as much time to devote to getting ready as I might have, because I am no longer with Blake Cassels and Graydon; I've established my own law firm as of February 1. That was one reason for my face. I did have the privilege of working with Gordon Fairweather at the Canadian Human Rights Commission for close to 10 years. He was the chief commissioner; I was the general counsel and director of the legal branch only.

I have been in private practice for, I guess, close to eight years now, since leaving the federal commission, practising human rights exclusively. I act primarily for respondents, but I do act for complainants as well. I've also taught human rights law and I've been involved in the area of human rights for close to 20 years. I say that after telling you I didn't have enough time to put it on the brief and try to bolster my credibility.

You've probably heard a great deal that the commission needs reform, and in my paper I've referred to that. There's one, I think, vivid illustration that the code, which I believe was originally enacted in the 1960s—and the scheme hasn't changed since then—drastically needs updating. You see, the official title of the head of the Ontario Human Rights Commission is "chairman." There is no thing as "chief commissioner." But the commission is too embarrassed to use the official title in the Ontario Human Rights Code, which is "chairman." If that doesn't prove that the code is out of date, I don't know what does.

I've divided my paper into two sections: first, the problem and, second, some suggestions for a solution. But the main problem is delay, and I would guess that you've already heard a great deal about delay. I would suggest that there are some reasons for it, and one of the reasons is that, in my view, the commission creates its own backlog or contributes to the creation of its backlog.

The commission constantly strives to enlarge its jurisdiction, and accepts every single type of complaint imaginable. In the paper I use as an example the commission's attitude towards the ground "handicap." Originally, the commission imposed virtually no limits on the type of medical condition which could constitute a handicap, and on page 3 I've quoted from a 1989 paper of the commission that stated that a handicap included "virtually any illness or injury, regardless of its severity or duration. The definition covers, for example, minor illnesses such as a cold or influenza..."

Now, a board of inquiry in 1990 told the commission that it was wrong and explained to the commission that that's not what the Legislature had in mind when it added "handicap" to the Human Rights Code. Since then, the commission has changed its standards and no longer deals with transitory medical conditions, but I don't think the underlying attitude that led the commission to take such a broad view of its jurisdiction has changed, and the commission still takes a broad view of its jurisdiction in other areas. Again, while the commission did change its standards on "handicap" after the board decision, in the years leading up to that board decision it had literally choked itself with complaints by accepting such a wide definition.

1510

There are current examples. One example that's talked about a great deal is the sale of adult magazines in neighbourhood convenience stores. I'm not going to take a side and say they should be sold or they shouldn't be sold, but there are two levels of elected government that have dealt with the matter: There's the Criminal Code and there's the municipal councils that said the covers had to be concealed. If the complainants felt that these standards were inappropriate, then of course they could attempt to get their elected representative to change the standards. But the question is, should the Human Rights Commission be the final arbiter of all social issues? If it is going to be the final arbiter of all social issues, even issues that have been decided by elected governments, then of course it is going to be backlogged.

Another example I use is that currently the commission's definition of "undue hardship" in the case of accommodation is so broad—and I've quoted from a commission document that it says that cost will not constitute undue hardship unless it substantially affects the viability of an enterprise. It's a bankruptcy test, or pretty close to it. The effect of such a broad view is that it multiplies the complaints that the commission has to deal with.

I suggest that because of the commission's jurisdiction-hungry nature, no matter how much it's supported with resources and staff, it will always be backlogged because it will always be sucking in more complaints.

Related to that is that the commission—and I'm skipping over to page 7 now—can't say no. In 1981, the code was amended to allow the commission to play a gatekeeper role. A section was added to the code to allow the commission to refuse to deal with a complaint at the beginning, before it investigated. Well, the commission doesn't use that section very much. The commission simply has the jurisdiction, but it doesn't use it.

The next section I've entitled "Head Office: The Abyss." As a human rights lawyer, I deal a great deal with investigators, and sometimes you don't hear from them for a long time. Months go by and then when you hear from them, you say, "Where have you been? Why haven't I heard from you?" and the reply I hear often is, "I've just got the file back from head office where it was being reviewed." As the previous witness indicated, there are several levels of review at the commission, both head office departments and regional managers as well, and I

think these multiple levels of review cause delay.

Commissioners: The commission decision-making meeting was identified as a bottleneck in the Ombudsman's report, but you have to remember—and I'm not criticizing the individuals who are appointed commissioners; I accept that they are diligent, act in the best of faith and are committed individuals to their office—they meet two to three days at a time every four to six weeks, and there are so many cases to go through they couldn't possibly review the actual files and the evidence and the interview notes of the witnesses. They have to deal with summarized, digested briefing material prepared by staff.

This does two things. The first thing is that it puts an inordinate paper burden on the staff and diverts the staff from devoting itself to processing complaints, but it also removes the decision-maker from the front line. The commissioners have not met the people involved, have not interviewed them. I suggest that the infrequent nature of their involvement prevents them from developing the necessary expertise to make effective decisions, and then if they ever do develop it, they're disqualified from serving because there's a two-term limit on being in the office.

Boards of inquiry: Boards of inquiry are generally part-time, ad hoc boards. They're law professors who are appointed to hear the cases. They teach their classes, and they may have a day or two a week that they're free and they want to schedule the cases during those days. You put that together with the schedule of counsel and it's pretty hard to start a hearing and finish it. What happens is that it gets adjourned and adjourned and it adds to the delays.

Then there's one other matter. I've called it the commission's many hats, the slanted playing field. The commission is investigator, it's educator, it's a conciliator, it decides whether a case will go forward, but once it gets to the ultimate stage, the commission becomes the lawyer of the complainant. Not technically, but in effect the commission is the prosecutor and represents the interests of the complainant.

My view is that the commission becoming the ally and the representative of complainants has the effect of permeating the commission's entire process and demeanour. I refer to the 1991-92 annual report of the commission, in which it referred to itself as being "technically in a neutral position between complainants and respondents." I think respondents would agree with that description. Even the Cornish task force noted that the commission itself expressed dissatisfaction over the confusion and conflict caused by its conflicting roles.

The other effect of that is that because of the commission, in effect the government, taking one side of the case, respondents are overmatched and often choose to pay a settlement rather than incurring the great expense of trying to establish that they didn't discriminate.

Now, the commission may say that its policy is not to coerce respondents into settlement, and I accept that, but the commission would be the first to agree that it's not intention that matters but the effect of a system in place. The effect of the system that's in place, in which the government pits the government against a private respon-

dent, has the effect of putting a lot of pressure on respondents to settle.

Those are the major problems as I see them, and I have some suggested solutions. Now I'm on page 10 of the paper.

The first is that they should be full-time decision-makers. In 1961, when the code was first enacted, perhaps it was fine to have part-time commissioners making decisions, but there is no excuse in 1994 why human rights decisions should be made by part-time officials. I'm not suggesting that the office of commissioner be made full-time; rather, I'm suggesting, do we need such an office? After all, the staff are full-time and professional, and why not vest the chief commissioner of the commission with the full authority and let that authority be delegated so the staff could make decisions about what happens to the cases without all these levels of review? They'd be closer to the files.

1520

Full-time boards of inquiry: I noted that the Ontario Labour Relations Board has close to 50 full-time adjudicators to hear labour matters. They have a bank of hearing rooms in their premises. The Ontario human rights board of inquiry has a part-time head and one hearing room.

I thought about the next sentence in my paper. I thought perhaps it was too strong, but I decided to include it and I'm going to say it. This committee would be delinquent if it failed to recommend that the government immediately establish a properly empanelled full-time board of inquiry to hear cases continuously.

Other suggestions are to put clear limits on the commission's jurisdiction. The commission won't accept its jurisdiction; it always wants to expand it. It refuses to play the gatekeeper function. So the code should be amended to make clear to the commission what it should take and what it should not take as complaints, and I've given some examples in the paper.

Reduce the levels of review: Again, once an investigator, who's the front line—has met the people, seen the evidence—decides a certain recommendation is in order, why not have that recommendation go forward?

Lastly, the above suggestions are a fine-tuning, but a complete overhaul could be considered. Everybody wants a hearing. Everybody wants to go to a hearing, but you've got 2,500 complaints a year. You can't have 2,500 hearings a year. It's not practical.

What might be practical is to build on what already exists, a pre-investigation conference conducted by the investigator where the parties are brought together to try and identify what facts are agreed on, what facts aren't, what needs to be investigated. That could be expanded. Both the respondent and the complainant would be expected to come, tell their story, bring their witnesses, in a very informal way, and at the end of it let the person who is now the investigator make a finding and make an order right then and there. If people aren't happy with the order, then they can take it to a full hearing before a board of inquiry.

That would be very much like what works under the

Pay Equity Act. The review officer informally looks into a matter and makes an order. It's not enforceable without consent. Either party has the right to go to the Pay Equity Hearings Tribunal. You might consider something like that. I would think it would be more workable than what's used now.

The main point I want to leave you with is that the Ontario Human Rights Code is very much like it was in 1961 when it was first enacted. It's been amended, it's been redrafted, but the basic scheme is what was first enacted in 1961. It is no longer meeting the needs of Ontario society in 1994 and needs to be looked at again.

Thank you for this opportunity.

Mr Marchese: It is Mr Juriansz; no?

Mr Juriansz: Yes.

Mr Marchese: I'm very sensitive to names. Mine gets distorted often.

You've read the Cornish report, I presume.

Mr Juriansz: I haven't read it lately. I hoped to read it before I came here, but I did read it when it came out.

Mr Marchese: You talked about an overhaul. You didn't quite say overhaul; perhaps it should be changed, because it has been since the 1960s when it was created.

Mr Juriansz: Yes.

Mr Marchese: Would you be recommending changes, in addition to the ones you've suggested, that Cornish makes in her report?

Mr Juriansz: I think there's a lot of wisdom in that report. There are things I don't agree with, but I don't think my suggestion is completely at odds with it. She wants to go to a hearing. My suggestion is a far less formal initial hearing, more of a meeting than a hearing. I think to have a formal hearing for all complaints is too big an undertaking. There are too many complaints, and to have a hearing for 2,500 complaints a year is too big an undertaking. It's not feasible.

Mr Marchese: That was the point I thought about having a full-time board of inquiry. Given that there are only a few cases now that go to a board of inquiry—

Mr Juriansz: Oh, I think there are a lot of cases that go to a board of inquiry. They're few relatively, a small percentage, but still a big number.

Mr Marchese: Right. My question was that if you create a full-time board of inquiry, would you not establish through it a court-like system, and isn't that the kind of thing we thought we might want to get away from? By having a full-time board of inquiry, do you not create a judicial kind of system in the way that we have the courts?

Mr Juriansz: I think a full-time board of inquiry certainly would be judicial. But it is a law, it's enforced as a law, and I think people have a right to a legal determination of their obligations and their rights. But I don't think you'd go to a full-blown formal adjudication as a first step. That's why I've suggested a relatively informal meeting conducted by what is now the investigator. That would be the first level of a hearing, and if people weren't happy with the outcome, then they would have a right to go to a formal adjudication in a court-like

legal setting.

Mr Marchese: Cornish makes a point about investigation method and says:

"The present mandatory investigative process for every claim simply does not work well. The requirement for a discovery and disclosure process at an early stage would, in the task force's view, assist both claimants and respondents. Investigation would only be ordered where this process had not led to sufficient disclosure of evidence."

Do you support that statement?

Mr Juriansz: I don't disagree with that. In fact, that would work very closely with what I've suggested, which is, call everybody together and say: "Bring your evidence. Let's put it on the table. You have people who you say support you. Bring them in. Let's talk to them." At the end of it—it might take a day or two days—right at the beginning, the person who's conducting the meeting will have the right to make an order, if it doesn't settle. I suspect many of them would settle.

Mr Curling: Thank you, Mr Juriansz, for coming in. The last sentence you have in your presentation is, "Radical reform is imperative." I'm so glad my colleagues on the government side have started reading the Cornish report. We had hoped the minister herself would make some formal comment about the Cornish report, because there is some rather important reform that has been suggested in that. It's unfortunate, having spent so much money on these task forces, that no one even pays the courtesy of responding to it, whether they agree with it or not.

Mr Marchese: At least we asked for a report.

Mr Curling: They asked for it, but it's on the shelf.

Mr Juriansz: I think I'm caught in the crossfire here.

The Chair: Just ignore it.

Mr Curling: In the same report, Mary Cornish asked for more independence of government. As a matter of fact, more cases and human rights cases have been against the public sector than the private sector, yet we are so closely—they call it arm's length. I call it almost like bosom friends, as a matter of fact. Do you feel that there should be a separate format, a different format than how the Human Rights Commission operates, in other words, reporting back to a legislative committee?

Mr Juriansz: Certainly that's the way it works federally, where the annual report goes to Parliament and it's only for administrative purposes that the federal commission reports through the Minister of Justice. I think that's a preferable system, yes.

Mr Curling: The federal system too that you speak about doesn't even handle systemic discrimination.

Mr Juriansz: Excuse me?

Mr Curling: Correct me if I'm wrong. The federal system, the Canadian Human Rights Commission, I presume, doesn't address much of the systemic discrimination, and Human Rights, Ontario, does a minimum amount of effort in regard to systemic discrimination cases, which is the core of getting rid of this terrible injustice in human rights. Do you feel that how it is set up now, maybe that's all the Human Rights Commission

should be doing, identifying systemic discrimination, for instance, getting out of the triple role that you talk about here, trying to play the role of everyone? You have so adequately identified those roles. It will more or less mean it will want to educate, it will want to be the conciliator, it will want to be the prosecutor.

1530

Mr Juriansz: I didn't say it in my remarks, but in my paper I've suggested that in the model I've proposed, where you go from an informal meeting to a board of inquiry, a much scaled-down version of the Ontario Human Rights Commission could intervene in selected cases. In cases that are not routine, that involve larger issues, systemic issues, then a smaller commission would have the right to intervene and deal with those cases.

Mr Bradley: How do you solve the problem that you've identified? I must compliment you on your brief very much. I think it's very thoughtful. You identified a problem that says, "Respondents are overmatched and...choose to pay a settlement rather than incurring the great expense of...establishing that they didn't discriminate."

I'm just taking part of that sentence, but you're saying that the commission takes one side and it provides resources, becomes the prosecutor down the line, and the respondent is very vulnerable because the respondent may not have the money or the wherewithal to respond. How do you solve that problem then? Are you going to give them legal aid lawyers too? What are you going to do with that? What would be your suggestion to level the playing field and to overcome the perception that some people have out there that they are guilty until proven innocent?

Mr Juriansz: I think there are several things you can do. First, by putting more of an onus on the complainant to take the case forward, getting the commission out of it, that would help. By making it very clear to the commission what its role is, so that it's not taking cases, expanding its role against respondents, that would help. I think you could change the cost provision in the code.

Right now, respondents can only get costs against the commission if there's bad faith or hardship cause. You could expand that to make costs available in a broader range of circumstances. You have to remember that if you're charged with a crime and prosecuted by the government, you don't get costs and you have to pay your own way. I guess the problem here is that the cases aren't scrutinized as carefully for sufficiency of evidence and soundness in law before they're taken forward.

Mrs Witmer: I'd like to thank you for your very thoughtful and excellent presentation. I thought there were some very good suggestions here for changes. I was interested in your comment on page 5, where you say that the commission has a nature which is "jurisdiction-hungry." I would agree with you. It's just speculation, obviously, whatever your response will be, but my concern is, do you think the Employment Equity Commission that we set up might also have the same problem?

Mr Juriansz: Maybe I'll come back when you're

looking into the Employment Equity Commission, if I can defer till then.

Mrs Witmer: I guess the other question that I would ask you is, there was some discussion, actually, around the Employment Equity Commission, the fact that really it should be this particular commission that should be dealing with the enforcement of the legislation. Do you think that would be possible, as opposed to setting up yet another commission which might function as inefficiently as this one does?

Mr Juriansz: As a general proposition, as few regulatory agencies as possible. I would go further and put together not only the Human Rights Commission, the Employment Equity Commission, the Pay Equity Commission, the labour board; I would create a superemployment agency, because there's so much overlapping. You can lose your job and grieve and go to arbitration. It could be because of harassment or something. Why not have one superagency that looks at all employment-related matters, an employment tribunal? So I would go much further than your suggestion of just putting the two together. I'd put five or six of them together.

Mrs Witmer: That makes good sense to me. Consolidate and at least make sure that whatever you come up with does function more efficiently than some of the commissions that we presently have.

Mr Juriansz: You might want to look at Britain. They've got an employment tribunal and an employment appeal tribunal with very broad jurisdiction.

Mrs Witmer: You were suggesting here that those people who have already gone through the Workers' Comp route should be prohibited from coming to this particular commission. What would be the rationale for that?

Mr Juriansz: I just used that as an example. What happens now is that people can try and get a solution to their grievance in a number of different areas, and if they lose in one place, they go to the next place. So it would be interesting to see, from the commission's figures, how many complaints are being dealt with, could be dealt with or already had been dealt with in another forum. So I just used that as an example. The Workers' Compensation Act does require employers to accommodate the needs of injured workers. There is a duplication there and both agencies could look at the same case. If you lose in one place, you go to the next.

Mrs Witmer: That happens all the time now. We all have constituents who have lost one place, so they go on to the next.

Mr Juriansz: The problem is that this adds to the commission's backlog because it's dealing with complaints that have already been dealt with or could be dealt with elsewhere.

Mrs Witmer: That's right.

Mr McLean, I think you had a short question.

Mr McLean: Yes. I'm just curious: How many people, would you think—this is probably a question for the commissioner—have been turned down by the WCB and have gone to the Human Rights Commission with their grievance?

Mr Juriansz: I've always thought it would be interesting to look at some of the figures. You'd need to do an audit, but how many of the complaints that the commission has were filed longer than the six months after the events, the code's suggestion? How many have been or could be dealt with elsewhere? These are figures that would really be interesting to know.

Mr McLean: The Ombudsman is supposed to be the last resort, and how many who don't get satisfied with the Ombudsman then go on to the Human Rights Commission?

The Chair: We're out of time. Thank you for your appearance before the committee this afternoon, Mr Juriansz. We appreciate your being here and your contribution.

CANADIAN MANUFACTURERS' ASSOCIATION

The Chair: Our next presenter this afternoon is Mr Ian Howcroft, the policy adviser for the Canadian Manufacturers' Association. Welcome, Mr Howcroft. You have the next 30 minutes. I think you've been here and know what the format is.

Mr Ian Howcroft: I'm the employee relations policy adviser with the Ontario division of the Canadian Manufacturers' Association.

The CMA appreciates the opportunity this afternoon to provide our comments to the standing committee on government agencies with regard to the Human Rights Commission. As most of you are probably aware, the CMA is a voluntary organization which represents manufacturers of all sizes, from all sectors of manufacturing and from all regions of the province and the country. Our members produce approximately 75% of both Ontario's and Canada's manufactured output. In Ontario, over 800,000 workers are directly employed in the manufacturing sector, and another 700,000 in the service sector are dependent on manufacturing.

The CMA has been very involved with the Human Rights Commission, an important institution, and has a long history of involvement regarding human rights. We recognize that the Human Rights Code has broader applications than just employers, but understandably the employer perspective will be the focus of our comments.

It's important to note and state that the CMA supports the principles set out in the Ontario Human Rights Code: Discrimination on the enumerated grounds, outside of lawful limits, should not be accepted, nor should it be tolerated.

The importance of and need for human rights legislation is widely recognized and supported. The provision of equal rights and opportunities without discrimination that's contrary to law is a laudable goal. However, in the pursuit of these goals and in the manner by which these goals are pursued, employers frequently encounter problems and endure unfair hardships, which ultimately serve to detract from economic growth, hamper effective management within those companies and, overall, diminish opportunities for individuals.

It's our view that the goals and mandate of the commission can best be achieved by fostering a spirit of cooperation with employers and with the other parties

covered by the code. By working with the employer community, employees and the general public, the Human Rights Commission can create a climate which better promotes a voluntary compliance with the Human Rights Code obligations. The adversarial approach followed thus far by the commission, in many cases, and by some of its staff, only hampers the positive evolution of human rights. We hope that our comments and suggestions that follow assist in furthering human rights in the province of Ontario.

I would like to emphasize once again that the CMA has a long history of involvement with human rights and with Ontario's Human Rights Commission. We have met regularly with the chief commissioner and with senior staff over the last several years. We have found these meetings to be very useful and helpful and we hope they will continue in the future. It gives us the opportunity to meet and express our concerns to those who are directly involved and who are making those decisions.

We would also like to say that given recent reports, it would seem that some progress has been made with regard to clearing up the enormous backlog of cases that exist, or did exist, at the Human Rights Commission. However, there is still too much of a delay regarding the handling of human rights complaints, and changes must be made to ensure that cases are expeditiously and equitably resolved. The old maxim that justice delayed is justice denied holds a great deal of truth.

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The commission could list numerous cases which have gone on for not just months but years, in some cases five or six years. This is unacceptable to the complainant and to the respondent. Memories fail, records are destroyed and witnesses disappear or die. Therefore it is essential that a complaint be dealt with as quickly as possible. I emphasize this point. It is one of the most oft-cited criticisms that I hear vis-à-vis the commission. Delays like this are not tolerated in other areas of the law or branches of government, nor should they be at the commission.

Over the last several years we have received other complaints regarding the way in which complaints were investigated and handled by the Ontario Human Rights Commission. Many employers feel, and many more have the perception, that a Human Rights Commission investigator or officer is not a neutral arbiter intent on determining the facts and rendering a decision, but rather is an advocate for the complainant who is there to look for evidence that will only support the allegations of the complainant. In other words, the employer's side is ignored.

While many cases may be handled appropriately and properly, this is not the perception that exists in most of the employer community. I have heard numerous stories of employers who are loath to even contact the Human Rights Commission for fear of inviting the commission in and creating, not solving, problems.

Consequently, the commission should do all it can to inspire confidence and thereby promote human rights throughout the employer community and throughout the province of Ontario. An investigator should bring an

unbiased mind to the investigation, learn the facts, and then render a decision.

This problem can be addressed in part by ensuring that human rights investigators or officers are properly and consistently trained. I have even heard of cases where the threat of an investigation was used to motivate an employer to a settlement.

We also hear concerns with regard to complainants pursuing remedies through several different forums. If a complainant has a grievance or a civil action on the same fact situation, then the commission should not proceed with its own investigation. Again, it's a question of effectively allocating the limited resources at the disposal of the commission.

CMA has always held the position that perhaps the most important part of the commission's mandate is to educate and communicate with the employer community, the employee community and the general public as to the rights, obligations and remedies that exist under the Human Rights Code. CMA has done a great deal with regard to this, and over the years has held workshops, seminars and conferences which have focused on or have featured human rights as a major issue or component. We have also kept our members updated with regard to human rights decisions and issues that may impact or at least interest them. In fact, last year we produced and published a handbook or a manual to assist our members, and employers in general, to understand and deal with human rights at a practical level.

There have been many developments in this area over the last few years, such as sexual harassment, so the educational role and component is now more important than ever.

I feel it essential to express the CMA's profound disappointment in the failure of the Human Rights Commission, as of late, to fulfil the educational aspects of its mandate. In planning and preparing for a human rights workshop that we held last fall, I was advised that the Human Rights Commission had placed a moratorium on public education. They declined our invitation to participate in the workshop, stating that their resources were going to be allocated to the resolution of complaints.

While we recognize, and we argued for earlier, that complaints must be dealt with expeditiously and equitably, it does not mean that the other components of the commission's mandate should be sacrificed.

When the newly appointed chief commissioner, Rosemary Brown, appeared before this committee last year, she stated that one of the three goals for her term as chief commissioner was to educate the Ontario public about equity issues. Furthermore, in a commission publication dated fall 1993 it states that "staff engage in numerous public education activities, representing the commission at conferences, workshops and seminars."

They obviously recognize the importance of education, but they failed to deliver. It was a missed opportunity for the commission to be proactive and take preventive steps.

It is impossible for the Human Rights Commission, or for any government body or agency, to monitor and

police hundreds of thousands of employers, and the others who are covered by the code. The best way to promote and ensure compliance with the code is to communicate and to educate the various communities as to their rights and obligations, explain to them what's involved. We would like to stress that this mandate of the commission is vital, and the moratorium, in our view, should not have been imposed. On a positive note, it would seem that the moratorium will be removed in the very near future—I believe in March.

We are also of the view that many Human Rights Commission's decisions and policies are excessive and unreasonable. They're a waste of the commission's limited resources. I'll just comment on one or two of these to illustrate my point.

One decision that the commission dealt with found that the common flu could constitute a handicap under the Human Rights Code. We found this to both trivialize the definition of handicap in the code and to ignore the situation of those who are truly disabled. This decision was overturned at a board of inquiry, but the cost, time and inconvenience it caused should not have been accepted or tolerated within the human rights system. This case should have been dismissed at the preliminary stages.

A second example I will address pertains to the commission's own guidelines on accommodation and undue hardship. We were very involved in providing input and comments to the commission on the development of these guidelines but we were very disappointed in the final product, which held that the test for undue hardship was one of bankruptcy. This means that to accommodate an individual, an employer would have to expend resources up to the point of bankruptcy. Again, in our view, this policy is illogical and it only works to make Ontario less competitive and less attractive to new investment. It also damages the credibility of the commission, making its role even more difficult. The commission must take steps necessary to establish its credibility.

To conclude, we would like to see the commission refocus its efforts and resources to ensure that human rights in Ontario are properly and effectively pursued and promoted. One concrete step the commission can take is to continue to build links with the employer community and with the other communities, and to fully accept and meet the educational obligations of its mandate. Human rights and the commission will play an increasingly important role in the future. The situation will be further complicated when Bill 79, the employment equity legislation, is proclaimed later this year. We will continue to consult with the government to avoid overlap and duplication. The systems should work harmoniously; they should not compete against each other.

This concludes my formal comments and I'd be pleased to answer any questions the committee may have.

The Chair: Thank you, Mr Howcroft. We start with the Liberals, Mr Curling, and we have six minutes each.

Mr Curling: I just wanted to focus, on page 2, on an accusation you have made here that is very serious, "that a Human Rights Commission investigator or officer is not a neutral arbiter intent on determining the facts and

rendering a decision, but rather is an advocate for the complainant who is there to look for evidence that will only support the allegations of the complaint."

Having said that, it seems to me that he cannot do his job effectively, as bringing about human rights and justice to all. In other words, if an individual in a company complains, they take the side of the complainant and they cannot be objective in going in there to bring about a decision. How do you see the commission reforming itself, which is desperately needed, it seems? The government had asked for a report to be done. This is what we call the famous Mary Cornish report, which the minister hasn't had a chance yet, for over a year, even to make any comments on. Do you see the commission reforming itself in order to adjust this inadequacy or this bias that's in it?

Mr Howcroft: I think the commission can do a great deal to address this concern that has been expressed to me by many, many of our members by ensuring that an officer or an investigator goes in and determines the facts, listens to both sides and then renders a decision. That doesn't have to take legislative or major reforms. It can be done through the direction of the chief commissioner.

Mr Curling: Do you feel that the Human Rights Commission should be reporting to a legislative committee? I've asked this question of many presenters here because it's extremely important, as I see it really, that in most human rights cases, as you know, the complainants are really within the public sector, more so than the private sector. If it continues to do that, do you see that as another impediment, as a harm, as not doing its job properly? For instance, if we have a case with the Ministry of Citizenship, that they report to the minister there, do you see in any way that justice can be seen to be done if it proceeds in the relationship it has now?

Mr Howcroft: I think you might have the possible perception in the case you've just cited but I don't think that's the real cause of the problems. It may be a benefit to have the commission report to a legislative committee rather than through the Ministry of Citizenship but I don't think that's the main problem that we face at the Human Rights Commission. I don't think making that one change would really do much to correct it. I think there are other problems within the commission that have to be addressed.

Mr Curling: I don't think it is the only problem, really, but to me it's very important and my party feels that it is extremely important that we should start looking at that independent way in which it carries out its duty.

Do you see it rather conflicting, the way they carry out their role in trying to be all to all people? In other words, as the presenter before talked about, it can be a prosecutor, it can be an educator in all this process, that trying to do all these roles has made it more ineffective and it has not been taken seriously.

1550

Mr Howcroft: I think there's a lot of validity in that complaint and I think there have to be changes with the way complaints are investigated to address that, yes.

Mr John C. Cleary (Cornwall): According to the organizational chart, the province is broken down into probably seven areas. You say somewhere in here that you provide seminars, like an educational seminar.

Mr Howcroft: To our members, yes.

Mr Cleary: How are those advertised? Are they open to the public or how do they work?

Mr Howcroft: They're open mainly to our members. That's whom we promote them to mainly through our own newsletters, but we also advertise them in some of the human resources and employment equity newsletters and publications. Anyone is welcome as long as there's room. Of course, there's a special benefit to being a member of the CMA and you pay a much-reduced rate.

Mr Cleary: Just for my own information, how many of those would you have in each area per year, or do you know that?

Mr Howcroft: It varies from year to year, depending on the issues. Three years ago we had a lot of Bill 40 seminars and the year before that we had a lot of employment equity seminars. It just depends on the issues and the need of our members.

Mr Cleary: So those are mostly advertised by newsletters.

Mr Howcroft: By newsletters and through certain publications. Plant magazine, for example, carries a lot of what seminars we're holding.

Mr Bradley: There are many in the business community who say that unlike courts of law, where there is a presumption of innocence until proven guilty, in fact their belief is, when they deal with the commission, that they are presumed to be guilty and then must prove their innocence. In your experience and in your discussion with your membership, is this a prevailing view, that in fact they are presumed to be guilty and must prove their innocence?

Mr Howcroft: Well, in some of the comments I hear it's even stronger than that: They're presumed guilty and it's impossible for them to prove their innocence. They find that a decision's already been made and that there's nothing they can do but provide a settlement. That's not every case but that's the overwhelming perception that is conveyed to me. I hear mainly from those who weren't happy with the system, of course, but that's the overwhelming sentiment that I receive.

Mrs Witmer: Thank you very much, Ian, for your presentation. We've certainly received many, many concerns about the commission and it appears that it is failing to respond, again as are so many other commissions and bodies within the government, to the needs that it's expected to respond to today. I was surprised to learn here that it was not fulfilling the educational aspect of its mandate. You indicate here that you understand this is going to be put in place again. Is that right?

Mr Howcroft: No, I understand they placed a moratorium last June or July. I believe they're taking the moratorium off in March or April but I haven't heard definitely that this is to take place.

Mrs Witmer: That is unfortunate, because I think if

we're going to do the job, we need to make sure that we do educate all people in the province on the equity issues. So that's just speculation on your part.

Mr Howcroft: No, I was given the date of March back in the summer when I tried to get a speaker from the commission to attend our workshop. I hope that is still the case because I think that is a vital role that they play. You have many people in the employer community who want to know about their human rights obligations, and the commission should be meeting that mandate.

Mrs Witmer: Exactly. Madam Chairperson, I wonder if we could get that information from the commission as to when it is going to once again fulfil that particular part of its mandate, because it is absolutely essential.

Did you hear the other gentleman respond to a question I had about commissions—Pay Equity Commission, Employment Equity Commission? He suggested that we structure one body and get rid of some of the others. What would your response be to that? Do you think there's some merit?

Mr Howcroft: There may be some merit but I see a lot of problems with that solution. It's been discussed for many years now. Madam Justice Rosalie Abella started a consultation on a labour employment court to deal with many of these issues when she was at the Ontario Law Reform Commission. So it's been discussed many times.

The idea of having a discrete commission to deal with this was to informally handle it expeditiously and have experts who could focus on the issues. That was the intent but it's gone away from that. I think if we refocus back on quickly dealing with the cases, having the experts deal with them, we'd be better served than tying them all together in an enormous employment labour court. But we haven't come up with a discrete position on that.

Mrs Witmer: What about the role of the commissioners who come in from time to time and take a look at some of the cases? Do you have any suggestions as to how that might be handled differently?

Mr Howcroft: Again, I think that the previous speaker gave some excellent suggestions with regard to that. When you have commissioners come in for one or two days a month they don't have the time to really give the cases the analysis that is required. I think changes could be made with regard to having the commissioners restructured.

Mr Daniel Waters (Muskoka-Georgian Bay): Thank you for your presentation. As I listened to your presentation I think I found one thing really different. In so many of the presentations it was basically: "Throw the baby out with the bathwater. Get rid of the commission. Start fresh." What I seem to get out of your presentation is, and correct me if I'm wrong: "Keep the baby. Let's change the bathwater and have it clear so we can see the bottom of the tub and actually get at the job that we're about to, and that's wash the baby."

Mr Howcroft: I think there are a lot of serious problems that have to be dealt with immediately, and that was the focus of our presentation, to come up with some solutions and changes that will address the concerns that

our members, the manufacturers, are currently facing. I think there can be a long-term examination of this but we can't wait for the long term.

The Mary Cornish report was released almost a year ago, calling for an equity tribunal, but the government was going ahead at the same time creating an employment equity tribunal while it was having a task force struck to consider if perhaps it should be a merged one. I don't think that solution was the best way to deal with it, so what we're focusing on now is coming up with solutions that will help the problems that currently exist before the commission.

Mr Waters: In my past life I had dealings with the commission and I found it very disturbing because it didn't matter which side you were on. I was sitting as a person in between and I was looking at the individual who had a complaint, where the commission was saying, "Cut a deal, cut a deal, cut a deal; what's it going to cost to get you to leave this alone?" and also looking at the employer, where the commission was saying independently to them, "Cut a deal, cut a deal; this is what it's going to cost you to get out of this." If a person truly has a complaint I don't see how that resolves the problem, and if he doesn't have a complaint it sure doesn't resolve the problem. How do you get away from that?

Mr Howcroft: It becomes an economic decision. I've talked to many employers who felt that the claim was entirely frivolous and they were offered a settlement for a few hundred or a couple of thousand dollars. To defend that action would have cost them in excess of \$25,000 or \$30,000, so it became, "What's the best way to make this claim go away?" In some cases they go ahead and spend the \$30,000 to defend it on a matter of principle, and that shouldn't be. Settlements should be attempted but they shouldn't be at the expense of justice.

Mr Waters: They just pay the price to get rid of it because it's frivolous. But let's say a person has a claim and it's a true claim. That person has an injustice done to him as well because three to five years down the road he might be in a situation where—just as you said, justice delayed is justice denied.

Mr Howcroft: It's up to the individuals to decide what they're going to accept in a settlement. A lot of times a settlement is not just damages to the individual; it's for the employer or the perpetrator to get involved in educational activities or to redress the situation so that it doesn't happen again. Often that's enclosed within the settlement document.

Mr Waters: I also think I heard you say that we have to try to resolve these things—not that I want to offend lawyers—see if we can't resolve them before we line people's pockets with legal fees.

1600

Mr Howcroft: That was the intent of having these non-judicial bodies to deal with human rights, labour relations, employment standards bodies. But unfortunately a lot of these bodies are becoming more and more complicated and lawyers are used as a matter of course. To have non-lawyers involved is an exception rather than the rule.

Ms Carter: You quite rightly, I think, expressed concern that the commission wasn't carrying out its educational function. I'd just like to read you a little quote and have you comment on it. "The commission has also published two useful and instructive documents. We will be providing the province's public and private secondary schools with a resource book entitled Teaching Human Rights in Ontario. It is my hope that this material will help teachers to feed the optimism of youth and the instinct most young people have for tolerance and social justice. The commission has also produced a policy statement on the subject of sexual harassment and inappropriate gender-related comment and conduct." Did you know that?

Mr Howcroft: I knew they were involved in producing some educational materials, yes. We applaud them for that. That's part of their role. But they have been failing in some aspects of that educational role in not getting involved in public education on an outreach basis, which we think is essential for them.

Ms Carter: As I say, I agree with you, but I think they are beginning to move on that. I certainly think that's a good way to go.

You also touched on ways in which the commission might be improved and I just wondered if you had any further comments on either what your predecessor this afternoon suggested or the suggestions in the Cornish report as to what can most fruitfully be done.

Mr Howcroft: Within the current system, I think the system could be greatly improved if commission staff, investigators and officers were properly trained. Another complaint that I heard was that members of ours who had locations in different areas were getting inconsistent decisions from different offices or inconsistent answers on the same question. I think that comes down to just basically training those people to convey correct and accurate information. A lot can be done to improve the situation by educating those at the front lines.

Ms Carter: It's my understanding, again, that the commission is now embarking on quite a thorough educational and training project, so I believe that is being taken care of.

Mr Howcroft: I hope so. I'm sure they have the intent to do that. We met with Raj Anand several years ago and he expressed those concerns. Catherine Frazee expressed the same concerns. We met last summer with Rosemary Brown to again raise our concerns on some of these issues. I hope they succeed this time.

The Chair: Thank you very much for your appearance and your contribution, Mr Howcroft.

MALCOLM MACKILLOP

The Chair: Our next presenter this afternoon is Mr Malcolm MacKillop from Borden, Elliot, barristers.

Mr Malcolm MacKillop: I'd like to thank the members of the committee for inviting me and giving me the opportunity to present my views before this committee. I think it's a privilege to be able to do that.

So that you understand my background—I think it's important for what I'm about to say—I am a management lawyer. I represent employers in unionized environments.

In the non-labour relations world, such as the Human Rights Commission, I in fact represent complainants, I represent accused respondents and I represent companies. It has given me a unique experience in really being able to represent all parties.

In addition to that, I think I'm one of the few lawyers in Toronto who actually do a considerable amount of training in human rights, particularly in the areas of sexual harassment, racial discrimination and accommodating people with disabilities in the workplace. That experience, I think, has provided me with some unique insight into how the commission works because I'm able to see how it functions from a complainant's point of view, how it functions from a company's point of view trying to implement policies and how in fact it operates from the point of view of a respondent.

Having said that, I want to make it clear to the members of the committee that I'm not here to be negative with respect to the commission. I think we hear that a lot, and I think it should be made clear that I can comfortably say there are a lot of very devoted people who work in the commission, people who spend many, many hours, who are devoted to improving society, who are devoted to their choice of work in promoting a workplace and a society which is absent any form of discrimination, and I think it's often that we forget about that.

I am not going to try to tell you how to rebuild the commission in 20 minutes. I don't think that's possible. I've looked at the Cornish report like many of you have. I have a lot of criticisms with respect to their authors about that report. I think the reason we're here now is because of the failure of that report to be more specific and more realistic about the changes that can be made.

We are in an economic crisis in this province. If any of us think that we can convince your constituents or the general public that we can spend all kinds of money on trying to restructure the Human Rights Commission, I think there are probably other priorities out there. We can make this commission work more effectively by implementing just a few non-costly items.

What my paper has focused on is the backlog: how to reduce the backlog that currently is in the system and, secondly, how to implement processes or mechanisms which will prevent a backlog in the future.

You'll see in my paper a reference to the Shreve decision, which was a decision of a board of inquiry in March 1993. It was a very interesting case because at the end of the day the board of inquiry felt there was a failure in the process to the respondents in that case because of the unusual delay. They also referred to the officer's workload in that case. They also referred to the failure of the commission officer to disclose the names of witnesses to the respondent. The case was interesting because it indicated some of the problems that are typical in most cases facing the commission.

If you look in the appendix which is attached to the paper, appendix A will give you an indication of the case load which is facing the commission. My understanding is that there have been two task forces which were assembled in order to try to deal with the backlog of cases. One was formed in November 1990 to December

1991 with 10 officers assigned and the second one was formed in December 1991 to December 1992 with 33 officers.

I think the process that was implemented certainly helped to reduce the number of cases. The case load certainly went down. There was an increase in the number of files that were closed. If you look at the year 1990-91, and you go to 1991-92, there is an increase in the number of cases opened by 564. The number of cases that were closed in 1990-91 was 1,763. The following year, 1991-92, there were 3,200 cases that were closed, an increase of 1,437 cases.

If you look at the case load numbers in 1990-91, there were 2,851 cases in the system. In 1991-92 there was a decrease of 660 cases in the system to 2,191. In 1992-93 there is again a decrease of 314 down to 1,877. I think that was the result of the task force that was put in place with the mandate of trying to close as many cases as possible. Their target, the second one, was to close 1,000 cases in a year. They closed 600, but again I think the efforts that were displayed by the members of that force should be complimented. But you'll see in appendix A that the numbers are starting to creep up again. You'll see there's in fact an increase for 1993-94.

1610

The investigation process, which I have highlighted in the paper, has suggested to you a few ways that the number of cases that are in the system can be reduced. The case management model is one that is used by trial lawyers and been implemented by the Ontario Court of Justice, and the idea is to fast-track certain cases. In fact, many cases can be heard within a period of a year, a year and a half, and we find that the parties involved in those cases are coming to a resolution much quicker and much easier than if their case—there are normal cases in the system which normally would take up to three to four years to be heard.

The case management model emphasizes non-negotiable time limits for filing responses. I can tell you from my experience that the time frame for filing replies can be endless. You can negotiate extensions for filing replies which are normally required, but the employer or the respondent generally can extend the time for filing a reply for several months without any pressure being felt from the commission.

The case management model also emphasizes the use of conference calls, which is something that the Human Rights Commission could certainly employ in order to get the parties to discuss the merits of their case.

One of the objectives of the case management model is to prioritize the cases in the system. One of the problems that you will notice, if you look at appendix B, which indicates the age of the cases, there are 644 cases that are one to two years of age in the system now. There has to be some focus with respect to which cases are going to be put on that system, and a case management model could, in effect, assist the commission in doing that.

The other process which can be looked at which can assist the commission in dealing with these cases can be

found under the Ontario Labour Relations Act, which refers to expedited hearings under section 46. As a labour attorney, I have experience with that section and I can tell you that many of the parties to collective agreements rely on that section in order to expedite cases which they consider to be very important. A similar system allowing both parties, either the respondent or complainant, to apply for an expedited hearing would in fact get a number of these cases out of the system.

The pre-hearing conference is another suggestion which is found in the paper, which is a conference between the parties prior to a hearing. I understand that is occurring now, but it is not mandatory. Under the civil trial rules, the parties have an obligation to summarize their cases, the facts they intend to rely on, the law they intend to rely on and they appear before an impartial third person, a judge, who would not hear the case if the matter proceeds. A pre-trial hearing or a pre-hearing conference in this forum can work. The only thing is, you have to make it compulsory. Currently that is not the case.

The suggestions that you'll see in my paper with respect to preventing the backlog are quite simple. I'm sure that there have been representations made to you with respect to the use of section 34. One of the problems that I think many parties are facing, particularly respondents, is that the officers are not using section 34. The matter currently has to be reviewed by commissioners, and it can be some time—we're talking six months to a year, even in excess of a year—before a decision with respect to a preliminary issue which could be raised under section 34 is in fact dealt with by the commissioners.

I suggest to you that there are many cases which on their face are very clear that should be referred to other legislation, another forum, or are beyond the time limits, and there's no reason to assume that the time limits should be extended. Specifically, it is my submission to this committee that there are other legislative forums where some of these complaints can be dealt with, particularly under the pay equity legislation or employment equity legislation. The Ontario Labour Relations Act, as you know from Bill 40, has recently been amended, which will allow for arbitrators to interpret the Ontario Human Rights Code, which is an effective way of dealing with complaints. In my experience, there are many cases that overlap with respect to the nature of the complaint. In fact, I've recently been involved in a situation where there were several grievances filed and also a complaint filed with the Ontario Human Rights Commission dealing with exactly the same facts.

Another suggestion that appears in the paper deals with mediation. I am suggesting to the committee that the commission should divide the mediation service and investigative service into two separate roles. Currently, investigators are charged with the responsibility of mediation or conciliation. Those hearings are far too formal. I have sat through them. They're ineffective. They scare complainants; they scare respondents. Where simply the parties want to get together and have a discussion, you can't do it. It just doesn't happen because

you're forced into the rules of what a conciliation meeting has to be or what the rules that have to be followed are in a conciliation meeting.

I think we need to divide up those roles. I think there's an inherent conflict of interest between somebody who does an investigation and then tries to mediate. Moreover, I would suggest to you that if you accept that type of recommendation, people can be trained to do mediation very easily and it's not an expensive process. They can focus on dealing with the cases that come into the system. They will have the authority to settle those cases under section 34 without waiting for approval by commissioners. It could be locally approved by the manager in the office.

In addition to the mediation process that I'm suggesting to you, I'm also recommending that there be specific guidelines for what's called the ESI, the early settlement initiative. One of the problems that I believe exists in the system is that the effort that is put into using the early settlement initiative effectively depends on a number of factors. It depends on the officer who is assigned the file. It depends on that person's workload, if they're busy or if they're not busy. It depends on the nature of the complaint, if they consider it to be serious. If they consider it may be a frivolous complaint but they're just going to put it through anyway, they won't work so hard at it. It depends on the respondent, if the respondent's prepared to talk settlement. It depends on the complainant. If the complainant pushes hard enough, then the officer's likely to push harder to try to deal with early settlement initiative or in fact to skip it and go directly to filing a formal complaint.

1620

As you know, the early settlement initiative is prior to filing a formal complaint. I have been involved in cases where the respondent has failed to return two or three phone calls and the officer has chosen unilaterally to make it a formal complaint: no more discussion. At that point it's difficult to get the parties back together again because a formal complaint has been filed, certainly the respondent is going to take a more difficult position with it and there's nobody to deal with the complaint. But those decisions are being made by the investigation officer. There seems to be no consistent pattern of how officers are dealing with ESI.

The other suggestion that you'll find in the paper is rationing resources. If you look at how the resources are being rationed throughout the commission, you will see that there is a disproportionate effect that is occurring. The Toronto central office and the Mississauga office are in fact the busiest offices, from my information. The number of staff, if you look in those two offices, is exactly the same as the number of staff you'll find in the other offices, which have in some cases half or one quarter of the number of cases. In Toronto central there are now 400 files. There are seven staff, officers, who are currently working. In Mississauga there are 390 files, with seven staff members. But if you compare that to, for instance, the Hamilton-St Catharines office, there are 125 files but eight staff. In Sudbury, there are 222 files and eight staff.

I think one way of dealing with the backlog of cases is just moving it around. If you can't move the staff from one office to another, you let them take charge of some of the files that may not be directly in the Toronto central area, because all we really care about is not denying anybody justice and giving them the right to file their complaint and having all the parties satisfied that the matter is being dealt with in an efficient manner. It doesn't really matter which office it's being filed with or which person is dealing with the complaint.

One of the other points that have been raised in the paper which I feel strongly about deals with cultural representation. I think if we review the cultural background of many of the officers who are working in these commission offices, you will find it does not reflect the community that they are representing. My submission to the committee is that it is imperative that the offices which represent multicultural communities have officers who represent that community. I think that would be beneficial for two reasons primarily. The first is that it will give more trust in the complainants. When a complainant comes in to deal with an officer, it enhances their trust level if they are dealing with somebody from their cultural experience and their background. Obviously, the language that is spoken would also assist the complainant in clearly communicating their needs and what has happened to them and an understanding of their cultural background. I think members of this committee are familiar with the case of Dr Guereshi, who had applied for a position. In that case, there was a recognition of how important recognizing cultural diversity is and how if we don't understand somebody's cultural background, it may adversely discriminate against them.

The second reason that I suggest that cultural representation is important is that it will enhance the reputation of the commission generally in the public, and the commission in turn should be in a better position to promote its objectives.

Finally, I would suggest to you, with respect to dealing with a backlog of cases, that you consider the recommendation that you go to outside advisers. In the pre-trial conference that I've referred to earlier, the backlog of civil cases was reaching a crisis situation in Ontario. The court decided to request senior counsel in Ontario to sit as pre-trial judges who would voluntarily sit without any charge to the parties or the system, the law society, and hear the merits of the case. The result of that project was that a number of cases that would not have been heard for a long time and would not have been settled were in fact heard and settled. This process, if adopted, could be clearly beneficial to the commission. I believe there are a number of people out there, myself included, who would be glad to assist the parties, to sit as a pre-trial conference adjudicator and to listen to these cases and to recommend to the parties how they should be dealt with. That, contrary to one comment that was made earlier, would not be putting money into the pockets of lawyers. I think that lawyers in the province who are concerned with human rights, as are other advisers in the area, have a responsibility to put something back into the system. I think there are people out there who will do that to help

deal with this backlog. Those are my submissions, and thank you very much.

Mrs Witmer: I want to thank you, Mr MacKillop, for just an excellent presentation. I think what I appreciate is the fact that you've concentrated on reforming the commission based on what's already going on. I certainly appreciate that, and you certainly have the insight.

Do you seriously believe that if the outside advisers were brought in as you have just suggested, this backlog could be dealt with quite quickly?

Mr MacKillop: I do. I don't have the statistics for you, but those statistics are easily obtainable from the project that has just concluded with the Ontario Court of Justice. The result was tremendous. You had senior lawyers with experience in civil litigation matters to sit as pre-trial judges, and a number of files were brought to a head and concluded. I think that could be done.

Mrs Witmer: That's good because that's something that could happen without a lot of change.

Mr MacKillop: Appendix A and the comments I've made with respect to when those two task forces were put in place, they had a mandate of closing 1,000 files. They in fact closed 600. That in itself is an indication that it works if you have people to do it. Now, they gave the commission half of its budget, again on top of its budget, to do that. I'm suggesting perhaps there's a way of getting the same results without the money.

Mrs Witmer: Going back to another point you made, you mentioned the fact there were other legislative forums for dealing with, for example, pay equity. We know we have the workers' comp. Do you have any idea at all yourself as to how many of those complaints from different bodies end up going through the Human Rights Commission at all? Have you ever seen those statistics?

Mr MacKillop: I haven't seen those statistics and I think it would be very hard to track. I think it would be very difficult. But I think there's a recognition among practitioners that there is a tremendous overlap in the systems that are out there. There's a lot of overlap between those systems. There's certainly an overlap between the collective agreement arbitration process and the human rights process.

I'm not sure in the collective agreement forum or labour relations forum whether or not we will see less reliance on the Ontario Human Rights Commission now that arbitrators have a specific authority to deal with the legislation, but there's a tremendous amount of overlap. I think it would be hard to trace because it just depends how it's framed.

Mrs Witmer: That's right, and then of course as the last appeal, we have people trying to go to the Ombudsman as well.

Mr MacKillop: That's an interesting point because I've had a number of cases where the case was actually given priority based on a complainant going to an Ombudsman complaining about the commission. It's ridiculous. I'm telling you, it happens. I've had several cases. These are people in the commission office who are doing the best they can, but they seem to get it from all angles. They really do. They don't know where to turn.

It just seems like the complainants a lot of times have that way: If they're not happy, they'll go to their MPP or they'll go to the Ombudsman.

1630

Ms Carter: I'm interested to see that you do think we can reform the existing commission and not have to take it apart or reform it or throw the baby out with the bath water, or whatever's been suggested.

We of course heard from Rosemary Brown, and she told us about some new initiatives that are coming up within the commission. She talked about reform from the inside out and was hoping that a lot could be achieved that way.

One suggestion was that "the agency is now organized into four new branches: a regional services and systemic investigation branch...to make the best use of the commission's enforcement resources; a public policy and public education branch...to provide the people of Ontario with clear and accessible expertise in human rights principles; a new legal services branch to house the office of reconsideration, preserving its ability to audit the work of officers in the regional services and systemic investigation branch"; and a corporate services branch which "will act as a catalyst for change at the commission, leading its efforts to become a model employer and ensuring excellence in customer service." Do you see that as going some of the way towards achieving what you would like to see?

Mr MacKillop: With all respect to Ms Brown, I'm result-oriented. I think we have a problem with the backlog in cases that are there now, and there are a lot of people who are being denied due process: complainants, respondents. That sounds wonderful, but I want to see results. The problem is that we had the Cornish report, and complainants and respondents are still waiting to see it work better. The suggestions I have put forth to the committee certainly represent an easy way that doesn't cost a lot of money to deal with the problems.

As a practitioner in the area, the fundamental problem I see is the backlog of cases. Once you get that dealt with, you can move on to try to better meet the objectives that the commission has with respect to public education and a number of things.

I can tell you about the public education, though, that a lot of employers are being counselled that they don't want the commission in the four corners of their establishment. So it doesn't strike me that there's going to be a lot of people running out there after public education, having people to come in and train.

The one comment I would make, though, is that my experience with the commission is that the officers I've had the experience with are more than willing to go out there and train with you. I've done it. I've done training with an officer and it's been very effective, but I think we have to keep our focus on dealing with the cases that are in the system and how we get rid of them.

The Chair: Mr Curling.

Mr Bradley: He's yielded it to me to start here.

I wanted to comment favourably upon your suggestion that the investigative and the mediation segments be

separated. I've seen the same experience in the Ministry of the Environment, where you used to have the abatement people and the investigation people being the same people, and that is not possible, in my view. So I want to commend you on that suggestion. I think there are two distinct roles and it's impossible to play both roles.

My second question is, we've had a previous witness suggest that perhaps in some cases, to get out of an embarrassing public situation, people had paid off people. Some people use the words "hush money." In your experience, how often does this happen in relation to the commission that people, simply to avoid bad publicity, just pay off the complainant?

Mr MacKillop: I've done a lot of training in sexual harassment. I probably have done more training than any lawyer in this province since Anita Hill in 1991, and I can tell you that if there is a complaint against you in sexual harassment, in most cases you'd want it to go away real quick, with all respect, and I think that probably happens a lot in that area.

When you're talking about a case of racial discrimination, I think again companies don't want to be seen as discriminating against a certain population in their workforce. Other cases, I don't think it happens too much. The areas of sexual harassment and racial discrimination are the ones that tend to draw more attention to a company and the individual. In the commission there is a strong emphasis on trying to resolve the cases, and they want to cut a deal. Although there's a right of reinstatement, most complainants don't want reinstatement. They want money, and they want to cut the deal and move. So it happens a lot.

When you're advising an employer with respect to defending a case which may not be heard until three or four years from now, you're saying: "Let's talk settlement, because this is going to drag on for three or four years and it could be embarrassing to you. People will forget about your defence, and are witnesses going to be around?" There are a number of factors that go into considering a settlement, but in cases involving sexual harassment or racial discrimination, they are more likely to be cases where money is exchanged in order to resolve the dispute.

Mr Bradley: In terms of employment situations then, do you think, with this in mind, that this in the long run tends to make it more difficult for people who haven't been adequately represented in the workforce to be adequately represented in the workforce, the fear that somebody's going to have to deal with a human rights case, whereas they might not have to deal with a human rights case if they were not dealing with a person who has been underrepresented in the workforce previously? In other words, if they want to hire me, the chances of a case being brought before the Human Rights Commission

by me is much less than it is by someone else, by Alvin.

Mr MacKillop: Is the question, are employers deciding who they hire based on their race because they're scared of increasing the number of complaints?

Mr Bradley: Yes.

Mr MacKillop: I'd be scared to answer that question, because I don't know that answer.

Mr Bradley: That's fair.

Mr MacKillop: It could be one of the consequences that flows, but it would be very difficult to think that employers would start that process of hiring based on being scared of complaints.

Mr Bradley: One would hope not.

Mr MacKillop: One would hope not, and I think employment equity is certainly designed to deal with some of those issues.

Mr Curling: It's not proclaimed yet.

The Chair: Thank you, Mr MacKillop. The committee appreciates your time and your contribution by being here today.

Mr MacKillop: Again, thank you very much. It was a privilege to appear before your committee.

The Chair: We just have one item of business, committee members, with regard to the appointments that we will be dealing with next Tuesday and Wednesday, the 15th and the 16th.

There was a selection that the subcommittee made that was approved by all of the committee in the name of Kristine Connidis. She is an intended appointee as a member of the Ontario Criminal Code Review Board. At this time Ms Connidis is unable to attend, as she's out of the country. In fact, she's in Switzerland studying at the Jung institute, south of Zurich, until the end of February. So we need direction from the committee as to whether you would just like her appointment to go ahead. The other opportunity would be to have her reviewed when the House resumes sitting. This was a selection by the government members, so I'm looking to the government members.

Mr Waters: I'd just move that we let the appointment go ahead at this point in time.

The Chair: Any discussion on that? All right. There's unanimous agreement that the appointment go ahead.

I would like to remind you that tomorrow our sitting starts at 2:30 in the afternoon, and we have the pleasure tomorrow afternoon of having the newly appointed Employment Equity Commissioner, Ms Juanita Westmoreland-Traoré. We look forward to that presentation and your participation tomorrow afternoon at 2:30. The committee stands adjourned.

The committee adjourned at 1638.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

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- *Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cooper, Mike (Kitchener-Wilmot ND) for Mr Mammoliti
Lessard, Wayne (Windsor-Walkerville ND) for Ms Harrington

Clerk / Greffière: Mellor, Lynn

Staff / Personnel: Pond, David, research officer, Legislative Research Service

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Mardi 8 février 1994

Standing committee on
government agencies

Comité permanent des
organismes gouvernementaux

Ontario Human Rights Commission

Commission ontarienne
des droits de la personne

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 8 February 1994

The committee met at 1433 in the Trent Room, Macdonald Block, Toronto.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mrs Margaret Marland): Good afternoon. We are going to continue our review of the Ontario Human Rights Commission.

EMPLOYMENT EQUITY COMMISSION

The Chair: Ms Juanita Westmoreland-Traoré is our Employment Equity Commissioner. Welcome, Ms Traoré. Am I pronouncing your name correctly?

Ms Juanita Westmoreland-Traoré: I prefer Westmoreland-Traoré. It's a little bit longer, but that's me.

The Chair: I think that's only right. Do you have a brief opening statement or comments you wish to make?

Ms Westmoreland-Traoré: Yes, I do have an opening statement. With the permission of the Chair, I would like to read a statement. I have copies of the statement; they're presently being reproduced and they will be presented to the members as soon as they arrive.

The Chair: Okay. Introduce your colleague for the Hansard record, please.

Ms Westmoreland-Traoré: The executive director of the Office of the Employment Equity Commissioner is sitting with me, Mr Kumar Singh. I will also be accompanied by the director of communications, Mr Pierre Lebel, and our legal counsel, Arlene Minott.

I would just like to beg the indulgence of the Chair. Unfortunately, I have a pressing engagement, a prior commitment at 4 o'clock. This is something that has been outstanding and I wasn't able to rearrange it and so I will have to make my statement and answer the questions. If there is another time or another occasion to make myself available, I will do so, but this afternoon I have to leave in order to make my engagement at 4 o'clock.

The Chair: It's up to the committee. If the committee is not finished with its questions, then we would schedule your return.

Mrs Elizabeth Witmer (Waterloo North): You'll be leaving at 4 or a quarter to 4?

Ms Westmoreland-Traoré: A quarter to four.

The Chair: We probably won't be finished in that time frame. Anyway, proceed, because the committee is scheduled to sit till 5.

Ms Westmoreland-Traoré: I'll do my best. I am honoured to be invited to appear as a witness before the standing committee in its review of the operations of the Ontario Human Rights Commission and I'll do my best to assist the committee by answering your questions.

I'd like to place my presentation in the context of both the evolution of human rights and the development of fair employment law. Let me quote from the preamble of the Employment Equity Act, 1993, which describes this interrelationship:

"The people of Ontario have recognized in the Human Rights Code the inherent dignity and equal and inalienable rights of all members of the human family and have recognized those rights in respect of employment in such statutes as the Employment Standards Act and the Pay Equity Act. This act"—meaning the Employment Equity Act—"extends the principles of those acts and has as its object the amelioration of conditions in employment for aboriginal people, people with disabilities, members of racial minorities and women in all workplaces in Ontario and the provision of the opportunity for the people in these groups to fulfil their potential in employment."

As you know, Bill 79, the Employment Equity Act, 1993, received third reading on December 9, 1993, and will be proclaimed this year. The adoption of this new legislation is an important milestone in human rights legislation in Ontario and indeed internationally.

The act promotes equality in employment by legislating proactive equity requirements, thus reducing the need for lengthy proof of discrimination. It focuses on the systemic roots of discrimination and the removal of systemic barriers and it is based on a collaborative model; that is, it requires employers to implement employment equity in partnership with unions and employees. Given these unique elements, the new act is a worthy contribution to the international construction of human rights and evolving universal employment standards.

Employment equity is about allowing people—all people—the opportunity to participate fully in the labour force. For most of us, employment is the key to meeting our individual and family needs. Most of us spend one third of our lives on jobs where we are paid a wage or a salary.

All people in the province are entitled to equal treatment in employment under the Ontario Human Rights Code. However, despite this entitlement, many people are still disadvantaged in employment because of systemic and intentional discrimination. Both Ontario's Human Rights Code and Canada's Charter of Rights and Freedoms specifically allow for special programs to improve conditions for disadvantaged individuals or groups.

The purpose of the Employment Equity Act, 1993, is to provide groups in our society who have, for far too long, faced barriers to equal participation in the workplace the opportunity to contribute and to fulfil their potential. The four designated groups are aboriginal people, people with disabilities, racial minorities and women. Statistics, studies and experience demonstrate that members of these groups are disproportionately represented in entry-level, low-paying and part-time positions.

Aboriginal peoples are virtually unrepresented in many workplaces across the province. The rate of unemployment for aboriginal peoples is twice that of other people. On average, aboriginal peoples living off reserve earn 26% less than the national average, while those on

reserve earn 42% less than other Canadian workers. On the job, aboriginal peoples are too often subjected to negative stereotyping and paternalistic treatment. Increasingly, however, there are positive indications that aboriginal peoples are succeeding in higher education through community-based education and training programs managed by aboriginal people.

The rate of unemployment for persons with disabilities is also twice that of other workers and official statistics do not include those people who have become completely discouraged and given up looking for work altogether. Thirty per cent of unemployed people with disabilities report they have been refused a job because of their disability. Persons with disabilities face negative attitudes and misconceptions about disabilities, as well as physical barriers such as inaccessible work sites and a lack of technical devices.

1440

When the minister tabled the Employment Equity Act in June 1992, the Honourable Elaine Ziemba, Minister of Citizenship, announced that she would establish a working group to advise her on issues regarding the employment of persons who are severely disadvantaged because of their disabilities. The work of this group, chaired jointly by Dr Shirley Van Hoof, chairperson of the Ontario Advisory Council for Disability Issues, and myself, will contribute to the development of policy and regulation on disability issues. A major objective of the group has been to propose a coordinated strategy across government ministries, such as the Ministry of Education and Training, the Ministry of Transportation and the Ministry of Community and Social Services, to bring about improved conditions for persons with severe disabilities.

Women and men who are members of racial minorities experience higher levels of unemployment and underemployment. In their 1985 study *Who Gets the Work?*, Henry and Ginzberg found that for every job offer a black person in Toronto receives, a white person with the same level of experience and education receives three. Despite the fact that 22% of racial minorities in Ontario have university degrees, as compared to 13% of other members of the labour force, racial minorities still earn less than other workers.

Among members of racial minorities, discrimination is often found in the recruitment, hiring and selection practices of organizations. For example, a survey of a representative sample of agencies, personnel recruiters and hiring managers conducted by the Canadian Recruiters Guild between 1985 and 1988 found that 94% had discriminated on the basis of colour and that 87% of corporate recruiters and all agency recruiters had received direct discriminatory requests from those they worked for and most had complied with those biased requests.

Women, of course, are the largest designated group and make up at least half of the other three designated groups. Although some women have made substantial gains in employment, many women are still concentrated in part-time jobs or traditional occupations. As a matter of fact, 41% of women are found in only 10 occupations: secretary, sales clerk, cashier, food and beverage server

etc. In contrast, men comprise the majority of workers in all of the other 180 occupations.

Although the wage gap between women and men employed full-time has narrowed—it was recently reported that women earn an average of 71.8% of what men earn—women continue to earn less than men with comparable or lower levels of education. In fact, as a group, women university graduates working full-time earn about as much as males with only a high school education. Like many racial minority persons, women in the labour force often come up against a glass ceiling which blocks their promotion into decision-making positions.

The new labour market reality makes employment equity a necessity for many forward-looking businesses. Data from Statistics Canada and other demographic studies show a marked increase in the labour force participation rates of designated group members. The statistics confirm that the profile of Canada's population and its labour force is changing. This change is also reflected in the marketplace, in the consumer base and in the equity or shareholder base of major corporations. In order to remain competitive, organizations can no longer rely on the traditional pool of workers; they must draw on a growing and more diverse pool of skills, experience and expertise.

This will mean an increased obligation on employers to accommodate and to retain designated group members in the workplace. Through employment equity planning, employers can prepare for the changing workplace and culture and meet the needs of all their employees.

The Employment Equity Act is the culmination of a long and sustained process of public consultation over the years. More recently, my office conducted public consultations on employment equity across the province, from November 1991 to March 1992. The consultations consisted of the distribution of a discussion paper entitled *Working Towards Equity*, public hearings in nine cities, joint initiative projects with 25 organizations, special meetings with participants from aboriginal communities, a mail survey, technical seminars and consultation with the construction industry. Over 400 written submissions were received and analysed.

The consultative process was an opportunity for input from all sectors across the province, as well as an invitation for technical and expert advice on the implementation and enforcement of employment equity legislation. Recommendations arising from the consultations directly contributed to the development of the Employment Equity Act, which was introduced in the Ontario Legislature concurrently with the publication of the consultation report *Opening Doors*.

The act requires employers to take three main steps to implement employment equity. First, employers must conduct a workforce survey, a snapshot of the workforce which reveals how many employees are members of the designated groups and at what levels of the organization they are working. Before conducting the survey, however, employers will provide adequate information and education in the workplace to explain clearly the principles of employment equity and the purpose of the survey. This information will set the climate for a successful

workforce survey.

Second, employers must review their employment policies and practices to identify discriminatory barriers.

Third, they must develop an employment equity plan or plans to eliminate these barriers. The employment equity plan must contain qualitative measures—that is, positive measures, supportive measures and accommodation measures, according to the circumstances—as well as specific numerical goals and timetables for achieving results.

Employers will carry out these main steps jointly with bargaining agents. In non-unionized workplaces, employers will consult with employees who are not represented by a bargaining agent, including employees who are members of the designated groups. Employee and union involvement will increase the acceptance and effectiveness of the planning.

The policy direction behind the Employment Equity Act has taken into account the concerns of the employer community to avoid excessive administration. This has been accomplished in several ways. I suggest the following to you: First of all, the regulation stipulates that the employment equity plan will be in effect for three years; secondly, employers are obliged to file certificates with the Employment Equity Commission, rather than reports or plans; thirdly, the Employment Equity Act will be phased in over a three-year period, allowing for a staggered implementation schedule based on the size and resources of employers; and, again, the act establishes modified requirements for smaller employers, who represent about half of all workforces covered. There are few reporting requirements based on a three-year period of reporting.

The cost of employment equity must be balanced against its benefits. Many employers have recognized employment equity as sound human resources planning which broadens the pool of qualified candidates and brings new talents and perspectives into the workforce. One employer, Manulife Financial, for example, has described employment equity as “a commonsense business policy to increase productivity, improve our ability to attract and retain talented employees and enhance our position in both domestic and international markets.”

As Employment Equity Commissioner, my mandate is to advise the government on the development of employment equity legislation in Ontario, through the Minister of Citizenship. It is also my role to prepare for the establishment of the Employment Equity Commission, to participate in interministerial committees relating to employment equity and to have a public presence, where appropriate, on issues concerning employment equity.

1450

As the Employment Equity Commission has not yet been established and we are in a process of transition, I can only speak tentatively about the Employment Equity Commission. In addition, as commissioner of employment equity my role is of course limited to employment equity and I wouldn't presume to offer any particular expertise on the operations of the Ontario Human Rights Commission.

I have chaired and continue to chair a number of committees. These include the Public Education Advisory Committee, which provides input into our public education strategies and materials; the Working Group on the Employment of Persons with Severe Disabilities, which considers special employment equity measures for persons with severe disabilities and helps coordinate government-wide initiatives in this area; and the interministerial employment equity committee on francophone issues, which examines employment barriers faced by francophones in Ontario's workplaces. These committees assist us in fulfilling our mandate and in ensuring that the work of our office is responsive to the needs and concerns of all our equity partners.

Together with Naomi Alboim, Deputy Minister of Citizenship, I co-chair an internal employment equity implementation advisory group whose members include a representative of the Ontario Human Rights Commission, a representative of Management Board, a representative of the Ministry of the Attorney General, a representative of the Pay Equity Commission and a representative of Cabinet Office. The purpose of the group is to receive policy and program delivery advice from equity ministries and agencies, to facilitate ongoing consultation and collaboration, and to ensure a corporate approach to equity planning.

My office, in consultation with related ministries and agencies, develops and implements public education strategies. Public education is critical to promote better understanding and acceptance of employment equity, to set the climate for the successful implementation of employment equity and compliance with the act; and also, of course, to dispel the prevailing misunderstandings about employment equity programs. We believe strongly that both legislation and education are required to achieve employment equity in Ontario.

To continue to build networks, my office has maintained an extremely active public speaking schedule since its inception, both responding to requests for speakers and proactively targeting key stakeholders. In addition, information about employment equity and the act has been distributed through info-kiosks in major shopping malls across Ontario, has been distributed through our information hotline, which has handled over 9,000 inquiries to date, and through our newsletter, which reaches a mailing list of over 18,000 readers and is to increase substantially in the next few months. A resource guide listing employment equity videos and print materials is also being prepared.

A two-phase public education program is now under way. Phase 1 of the program provides training on the principles and benefits of employment equity through, for example, the joint initiatives program and training workshops.

The joint initiatives program is very important to our office's public education strategy. It was designed to develop lasting partnerships with community organizations. Through the program, not-for-profit groups can receive support from the office, albeit modest, to undertake projects which raise awareness of employment equity. Groups participating in the joint initiatives

projects have, for example, organized conferences, workshops and new equity networks and have produced materials such as videos, brochures and newsletters.

Eight workshops for workplace and community trainers were piloted in the fall and winter of 1993 and are now being held across the province. Several workshops will be conducted entirely in French.

Phase 2 of the public education program, which will begin after the act is proclaimed and the regulation is finalized, will provide information and more technical training on how employment equity can be implemented in the workplace.

To promote awareness of employment equity and to support public education initiatives, my office has just completed the production of three new posters and a 12-minute video entitled *Equity Works*. Currently, my office is preparing implementation guidelines and workbooks which will be available by the date of proclamation to assist employers, unions and employees to implement employment equity. The guidelines will clarify the requirements of the act and the regulation and will suggest best practices for employment equity planning. A number of consultants have been retained to research and develop these guidelines. In many cases, focus group sessions were held to obtain input from all sectors.

Planning for data and information technology, as well as client services, is also under way. Preliminary data requirements for establishing numerical goals have been identified and will be finalized upon completion of the regulation and discussions of federal-provincial working committees.

In its capacity as facilitator, the future commission will provide information and advice on implementing employment equity in general and the act in particular. It will of course fulfil its role as a monitoring and enforcement agency. By examining certificates filed by employers, by conducting workplace audits and by consulting with stakeholders, the commission will assess the progress of employment equity in Ontario and submit annual reports to the Minister of Citizenship. I look forward to the proclamation of the act and to the creation of an effective and responsive Employment Equity Commission.

I'd like to end by going back to the preamble of the Employment Equity Act, where I began: "The people of Ontario recognize that eliminating discrimination in employment and increasing the opportunities of individuals to contribute in the workplace will benefit all people in Ontario."

I think it speaks to the collective enrichment that we will experience when we have achieved genuine improved employment equity in this province, and I thank you for this time.

The Chair: Thank you, Ms Westmoreland-Traoré. You're still insisting on leaving at what time?

Ms Westmoreland-Traoré: At 3:45 or 3:50, if you take the five minutes.

The Chair: It's just that it does present a problem for the committee in terms of divvying up the available time. I'll make it 23 minutes per caucus.

Mr Alvin Curling (Scarborough North): I want to

thank you, Ms Westmoreland-Traoré, for coming in, because it's extremely important, your presentation and the impact and the effect it will have as we review the Ontario Human Rights Commission. I still stand that it's one of the most important agencies in the province, and how it's conducted.

Your contribution here at this juncture is I think of the most importance of all of any presentation, if I dare say so. I say so because the Human Rights Commission has been going through many, many changes, and one of the changes that has been most profound is the one setting up an Employment Equity Commission. Really, what it's all about is that the Ontario Human Rights Commission has taken a sector of its unit, a systemic unit, and established another unit called the Employment Equity Commission, which is very much needed.

Not that I'm very impressed with the systemic unit right now, what has been done in the Human Rights Commission in regard to systemic discrimination, because I think it should be concentrating very much so in that area more than the individual complaints that really take most of its time.

We had somehow wanted the commissioner, that's you, to come before us when we were doing the Employment Equity Act.

Mr James J. Bradley (St Catharines): Is that right?

Mr Curling: We had wanted that.

Mrs Witmer: Yes, we did.

Mr Curling: The reason for that is that we see some changes coming in the Ontario Human Rights Commission because of that setup. We know of your expertise and of course of your knowledge and your contribution, not only since you've been here but before.

One of the questions that comes to mind—I don't know if it was properly answered, but there are cases that need to be dealt with by both the Ontario Human Rights Commission and the Employment Equity Commission. I want to know, how those two would work together.

1500

If you could tell me, do you think that justice will be denied due to what I feel now—I don't want to call it cumbersome because we're not quite sure. As you said, the Employment Equity Commission has not yet been fully established because we are waiting for proclamation and the regulations to come out to see how it functions.

Do you see any difficulty in that process or any confusion within the process of bringing one's case to the Human Rights Commission? While you're answering that I just want to know too, at this moment, if someone has an employment equity concern, would they now go to the Ontario Human Rights Commission or would they wait until the Employment Equity Commission is established before they put that case forward?

Ms Westmoreland-Traoré: Mr Curling, that is quite a complex question. I would like to begin just by making a comment about your opening remark.

With all due respect, I do not feel that the new Employment Equity Commission will basically be a part of the existing Ontario Human Rights Commission. I

think that we can draw several very clear distinctions between the work of the Ontario Human Rights Commission and that of the Employment Equity Commission.

I believe that there are obvious areas for collaboration because this is human rights law and it is about equality in the workplace, and that is an objective that we share with the Ontario Human Rights Commission. But if you look at the focus and the objectives of our legislation you will see that there are very clear differences.

First of all, our commission will be concentrating on employment whereas the Ontario Human Rights Commission has a much broader mandate and includes services, includes also housing, accommodation, whereas our focus and our responsibility will be employment.

The second major difference I would say is that the Ontario Human Rights Commission deals primarily, not exclusively but primarily, with individual cases and indeed will provide recourse and remedy to individuals or groups that have complaints of discrimination.

Our legislation will follow a proactive model much like the pay equity legislation and will require employers to adopt plans and to remove discrimination in a systemic way. It's not a legislation that deals with the question of intent or that deals with the question of certain actions that may have taken place, but indeed that looks at policies and practices and their effects on groups and seeks group remedies.

I would also say that in our work we will be providing, as our legislation states, assistance to employers, unions and other stakeholders, and this assistance will take different forms. Some of it will be material, some of it will be forming linkages and some of it will be educational work. This is really an all-encompassing task.

Our mandate also requires us to do audits. The audits will be an occasion for us to assess how employment equity is unfolding, to provide some assistance if necessary, to arrive at settlements with employers if there are differences of opinion, and if necessary to go before the Employment Equity Tribunal. This is different from the scheme of the Ontario Human Rights Commission. The Ontario Human Rights Commission does not audit but indeed has the responsibility of investigating once complaints have been laid. So I would say that our focus is different, our work will be different and I believe we may have common objectives but we will have resources exclusively dedicated to systemic change within the workplace.

Until the employment equity legislation is proclaimed the Ontario Human Rights Commission will continue in its mandate, and that is as it should be. Once our commission is up and running, then I think with our information and our strategy and workforce we will be able to encourage the development of the employment equity plan.

Mr Curling: The systemic unit which in the Ontario Human Rights seems to address the real core of where most of the discrimination is coming from, regardless of those identified groups, whether disabled or racism or what have you, employment equity I feel is moving of course in the right direction. We're trying to get, as you

say, a group solution or where to find the root of the problem of why people don't advance or get promoted or hired in the workplace, to find systemic causes, and then, after identifying them, eliminating them.

Many of the witnesses who have come before us have identified that the problem with the Ontario Human Rights is that it deals too much with the individual cases and spends far too little time dealing with the systemic problems and it should concentrate on the systemic problems. Do you feel that could be the direction to eliminate some of the discrimination that is happening here, or should the Ontario Human Rights continue to pay most of its time and attention to individual complaints or on systemic complaints issues?

Ms Westmoreland-Traoré: I think that these are very weighty considerations. I think that the Ontario Human Rights Commission is best placed to provide you with its observations and its reflections on this subject. With all due respect, I don't believe that in my position I do have sufficient information on changes, strategies, deliberations of the Ontario Human Rights Commission to give you a comment on that.

Mr Curling: That's unfortunate. I say that because what this committee does is review agencies and try to find a way of improving agencies that the government funds so that they can serve the people better. I know if we go to the Human Rights Commission I don't think I'll get all very objective; I think they'll try their best, of course, to give us as best how they do their job, but to find out from others how they see it.

I think, like employment equity, it has a great impact on how the Ontario Human Rights will work because I see too that they are kind of a human rights exercise of identifying and eliminating systemic discrimination in the workplace.

It's unfortunate that you may feel you're not in a position; I feel otherwise. I've heard you speak quite often and I know that you do acquire a tremendous amount of experience and knowledge in that area.

My second question is, and I want to give my colleague some chance to ask his question, do you see a similar backlog developing in the Employment Equity Commission, unless of course you indicate a specific time frame? I know you have all those time frames in which they will have to bring a plan about. Do you see any backlog developing here?

People are rather scared, in any of the justice areas in this province, that in all those justice areas there is a tremendous amount of backlog in the courts, in the Human Rights etc. Of course, the Ombudsman doesn't call hers a backlog but the fact is that we see a backlog there. We see that justice delayed, the old cliché, is justice denied, and the fear that people see that, "Here we go again; if we form a queue of employment equity to get our case resolved there's going to be a backlog."

Ms Westmoreland-Traoré: Mr Curling, I hate to start off on this voyage thinking that we may be already accumulating certain backlogs. We are only at the very beginning of our process and we are into a preparatory mode. We are carrying out consultations with our stake-

holders in order to develop services that are efficient, that are responsive and that are timely. We have had some reports and discussions with, for instance, members of the Pay Equity Commission, the Ontario Human Rights Commission, the Attorney General's office, so that we would address some of these questions. We are looking forward in, should I say, an optimistic way to being able to manage the work of the future commission.

At the same time, I think there is a slight difference in the position of the future Employment Equity Commission and the Ontario Human Rights Commission because the Ontario Human Rights Commission has a mandate to receive the complaints that individuals and groups would bring to that commission to attempt to settle, to investigate the complaints, to decide and take forward the ones that are appropriate to the tribunal, whereas under the Employment Equity Act the Employment Equity Commission does not receive complaints.

The Employment Equity Commission assists employers. The Employment Equity Commission has a role to audit. The Employment Equity Commission can and will develop a strategy in order to audit effectively, will divide its tasks into different sectors, perhaps different regions, different levels, will target according to labour market industrial activity to see how most effectively to use this tool of auditing. So the Employment Equity Commission I believe will have, to a certain extent, greater capacity to manage the work that it undertakes.

I'm looking forward and I hope that the Employment Equity Commission will be successful in this task.

1510

Mr Bradley: I have a couple of questions.

The Chair: You have 10 minutes.

Mr Bradley: Thank you. I'll try to make my questions quite concise.

You will recall the controversy in November of this year when the Ontario government put in an ad, I believe it was in the *Globe and Mail*, for a person in a fairly senior position in the Management Board of Cabinet, and that excluded able-bodied white males from applying. Subsequent to that, after considerable pressure that ad was pulled. Do you believe that employment equity can be served by prohibiting able-bodied white males from applying for jobs because they have been, as some would say, overrepresented in the public service in years gone by?

Ms Westmoreland-Traoré: I cannot talk to the specifics of the ad, the competition in the OPS that you're referring to. That specific circumstance is really not within my mandate. I will, however, comment on the general question of positive measures.

Maybe I can take you back a little, just because I'm aware of the consultations, deliberations, input that went into defining equality rights in Canada as they are contained in the Charter of Rights and Freedoms. As you know, section 15 of our charter redefines equality rights in Canada as being equality before the law, equality under the law, equal benefit of the law and equal protection of the law, and this was the result, obviously, of the experience of women, racial minorities, aboriginal people

and people with disabilities in Canada because of the limitations of the former definition of equality.

Besides this extension of the right of equality in our constitutional charter, subsection 15(2) specifically provided for special programs and declared that in Canada special programs designed to relieve or eliminate disadvantage of groups and individuals within those groups are constitutional and permissible. This is the basis of the positive measures as they are set forth in the Employment Equity Act, as they are also permissible under the Ontario Human Rights Code. Positive measures—

Mr Bradley: They may be permissible, but my specific question is dealing with whether or not as commissioner you believe—and I'll take away the specific incidence there—that able-bodied white males should be excluded from applying for jobs in the public service so that we can meet the goals of employment equity. You can talk about all the positive measures; I'm just asking about that. That's a negative measure and I want to know whether or not you agree with that negative measure.

Ms Westmoreland-Traoré: In order to answer that question, I believe that I would refer to the process that is set up under Bill 79 which requires both employers and unions or employers and their employees to consider the specific circumstances of their workplace, to analyse whether there is underrepresentation, in what occupations and at what levels, and what measures would be required in order to achieve representativity or equitable representation. I believe that is a decision under Bill 79 which is left to the workplace, and the different measures that will be available go from training, outreach recruitment, mentoring, literacy—there is a whole gamut of positive measures that can be used to help increase the representation of designated groups.

One of those measures is the limited eligibility competition. In my mind, the limited eligibility competition is an exceptional measure, and that measure could be decided upon by the workplace depending upon the circumstances, their experience, the involvement of the employees, the climate setting, the education, the information. I would think that it would be an exceptional measure.

The question of the exclusion of white able-bodied males has been raised repeatedly in the debate around employment equity. The need to have inclusive programs is important. I believe that if you look into the employment equity bill and its regulations, you will see that goal-setting is foreseen as the use of opportunities according to certain proportions to be determined in the workplace. Those proportions would be based either on population, the composition of the population concerning the designated groups, skills in the designated groups, the rites of graduation and leaving of educational and training institutions, many different factors that would be chosen by the workplace partners according to their relevancy in the particular circumstance.

That process, I think, is meant to say that certain opportunities which in the past have been denied should now be available to all workers, including the designated group workers. But I do not believe that process is meant

to be an exclusive or an exclusionary process. I really don't. I believe that when setting positive measures, it must be done in a reasonable way and in a way that takes into account the rights of all workers.

We know that already in the Ontario Human Rights Code there are provisions which prohibit constructive discrimination. If there is constructive discrimination, the employer is obliged to remove it. Restrictions in the workplace are considered constructive discrimination unless they are bona fide and reasonable requirements.

Mr Bradley: One of those requirements that we spoke of earlier this week was a requirement for employers to accommodate disabled employees, or potentially disabled employees. You will correct me if I'm wrong, but I think I heard in the committee that the only reason an employer could use to not undertake to spend money to accommodate a disabled person in the workplace was bankruptcy. I think that was what was stated in this committee.

Do you agree with that, that the only way an employer can avoid this is by saying, "I'm gonna go into bankruptcy if I do," and do you think that will enhance the opportunity for all Ontarians to get a job when we put requirements in that force an employer, at perhaps great expense, to accommodate a disabled person on his or her own, the employer on his or her own, to the point of bankruptcy?

Ms Westmoreland-Traoré: I can't tell you today what the interpretation of the regulations or Bill 79 will be by the Employment Equity Tribunal or the courts. I think that, yes, accommodation as it's specified under our bill, Bill 79, and under the regulations is a concept which is also included in the Human Rights Code. Indeed, there's reference to the Human Rights Code in the draft regulations. The real regulations have not yet been circulated. So I think there will be some consistency, but I can't tell you what the interpretation of "accommodation" and, as you're referring, "accommodation short of undue hardship" will be under Bill 79 and the relevant regulations.

1520

Mr Bradley: One reason that employers may tend to discriminate, and I want to know how we can overcome this possibility, is an employer's fear that if the employer hires a person from one of the groups which has been traditionally unrepresented in the workforce, that employer cannot fire that person if that person does not work out as an employee. In other words, if an employer were to hire me, it may be easier to fire me as a white male who is unlikely to be able to make much of a case before the Human Rights Commission than it is for a person from one of the designated categories.

How do we overcome that? Because I see then employers starting to unconsciously, or perhaps in some cases consciously, avoid hiring people who have been unrepresented before because of that fear of being taken to the Human Rights Commission if that employer wants to fire or reprimand that employee in any way. How do we overcome that?

Ms Westmoreland-Traoré: You and I know that fear is sometimes well founded. Often it's not well founded.

Fear is subjective, it is sometimes the object of a person's perceptions, and I would think it is our experience that is going to assist us in overcoming some of the fear. I know that many times when people are not familiar with a circumstance—working with people of other genders, for instance, working with people of other cultures, of other religions—they do have certain stereotypes and certain apprehensions as to how this would work out. Once in the workplace, where the diversity becomes a part of the everyday working culture and the reality, these fears are overcome.

I know now that in many of the industrial relations schools, in the schools of industrial psychology, social work and what not, there are special programs designed on managing diversity, and this because it is recognized that the new acceptance of difference, accommodation of difference, also brings with it very important benefits for the workplace in designing new products and reaching new clients, but at the same time in providing a workforce which is more motivated, which has less absenteeism, which has a lower cost of training because of the retention rates. There are all types of benefits, and I think when employers become more exposed to this, more cognizant, and it becomes their way of doing business, it will be easier.

I don't deny that there are fears. I believe the fears would probably be different in different parts of the province because of the different composition of the workplace. There are workplaces where there are significant concentrations of people with different backgrounds, different designated groups. But the difficulty has been that they have been concentrated in one area of the workplace and their mobility has been seriously impeded. So I think by more education, information, more expertise on managing diversity, more insistence on and understanding of the benefits that this brings, we will help to overcome this. I do believe the process that we have begun, which is to organize the workshops with trainers who themselves will then go out and train and adapt their materials to the specific circumstances, these forums will allow for more discussion, more hands-on communication.

This question of exclusion of white men has been the subject, I'm sure you've noticed, of recent publications, *Business Week* included. In these discussions it has been shown that where there is communication among the different groups because persons from designated groups have been excluded, marginalized, and persons from other groups have not had that experience but are now beginning to be apprehensive, there has been a better understanding of the objectives and the means that we can use to achieve employment equity.

Mrs Witmer: Thank you very much for making your presentation today, Ms Westmoreland-Traoré. I would say at the outset that our party is opposed to Bill 79. We are opposed to Bill 79 because we do believe in equal opportunity and we believe very strongly that unfortunately this employment equity policy is aimed at achieving equality of outcome and it is attempting to legislate the makeup of the workforce. As you know, it's going to be enforced and there's going to be an administrative monitoring procedure in place to do that.

We're concerned that distinctions which employers have been prohibited from making under the Ontario Human Rights Code, such as race, are now going to become distinctions which employers are required to make for the purpose of achieving employment equity goals. We believe very strongly that the focus of government should be to create an environment where there is equality of opportunity, and unfortunately we just don't see this happening. In fact, it's unfortunate, but I have to tell you that in recent years in this province I see a preoccupation with people looking at individuals differently because of their race and their gender. There's a preoccupation, and I think it's most unfortunate, because we're no longer all Ontarians: We're judged on the basis of our sex and our race, not so much our ability or our disability, but I really think there is too much focus on the other issues.

It's apparent in the preamble, and I'm very concerned about the preamble because I think it could have eliminated some of the concerns. The preamble states that the "people of Ontario recognize that eliminating discrimination in employment..." That's the part that I have a problem with. I believe if the government had not dealt exclusively with discrimination over and over again but was willing to also acknowledge that this underrepresentation in some respects is due to the historical and the social and the demographic factors as well—I know there was some acknowledgement, but there's this overpreoccupation with discrimination. I think we all know that because of other things, simply because of changing immigration patterns, which means that we now have a different racial makeup in our communities, as well as the pre-existing workforce that we had—let's face it: people such as my parents, if you had a mother, your mother usually stayed at home. These are all things that have influenced the makeup of the workforce in the past.

Certainly I think the biggest barriers to the four designated groups are education and training. I'm pleased to see, for example, that the University of Western Ontario now is encouraging, for example, the aboriginal community to become participants. I personally believe that's where our focus needs to be. We need to be providing equal opportunity, and I don't think we've done it. I wish we wouldn't focus so much on discrimination. People are feeling uncomfortable constantly.

I guess I'd like your reaction to that preamble. Why was it not more positive? Why do we always focus on the discrimination rather than recognizing there are the historical, there are the social and there are the demographic factors as well that have contributed to the underrepresentation of the four designated groups in the workforce?

Ms Westmoreland-Traoré: I appreciate your comments, Mrs Witmer, because I do know that employment equity aims to bring about fairness for all workers, employees, in Ontario, and the legislation sets out a process whereby that is to be achieved. At the same time, I think that process will be more successful to the extent that it's understood and that the objectives are shared.

I do think the amendments to the preamble were to include some of the comments and observations that

you've made. I noted when I was quoting, and I selected parts of the preamble deliberately, that they mentioned the provision of opportunity for the people in these groups to fulfil their potential in employment and to contribute in the workplaces, and that this will benefit all of the people of Ontario. So the question of the denial of opportunity has a double face. It is a denial for the individuals and the individual in that group, but it's also a denial for society in general. I think we're beginning now to recognize and realize more the burden, the costs, the loss to the general society from some of the denial and marginalization that has taken place.

You asked me what my opinion was. I would just like to mention to you that I understand the recommendations, the position of many people in designated groups. As I was listening to you, you mentioned that in the past, many mothers stayed home. I would just like to state that in my family, mothers didn't stay home. Mothers were required to work, and mothers were required to work as domestics. They were not given the liberty of working in the position of their choice. I know that in my family, and this may be unusual, my grandmother was a teacher and my grandfather was also a teacher, but when both my grandmother and my mother came to Canada, they were forced to work as domestics despite their qualifications. So I think sometimes we have a general approach to what was the tradition and what were the realities in the society and it wasn't universally shared.

1530

I know that a long tradition in the protection of human rights has been to prohibit the consideration of certain characteristics that are fixed at the time of birth. It can be race, it can be gender, it can be in some instances disability. Because of the evolution of the concept of equality as it is recognized in international conventions as well as our own Ontario Human Rights Code, special programs are permitted, and these special programs are designed to take into account, to identify and to eliminate the barriers, to put special measures for persons who are designated on the grounds of these characteristics.

This is because experience has shown that, true, we would like not to take these physical characteristics fixed at birth into consideration, but the fact is that they are taken into consideration. That is why it is not fortuitous that we have the type of economic profiles and labour market profiles that we have.

While I agree with you that we need to look more to the objectives and understand the objectives and the positive aspect of the objectives and the fact that we are looking for fairness for all in the workplace, at the same time I believe we do have to take proactive measures in order to achieve this.

Mrs Witmer: It may interest you to know, Ms Westmoreland-Traoré, that you and I do share something in common. Although I said to you that most people of my mother's generation did stay at home, I can also tell you, from the time that our family landed on the shores of this country, my mother did exactly what yours did for 30 years. She worked as a domestic and she was always embarrassed to share that information with the family that she had left behind in Europe, because it was rather a

humiliating experience, but it was the only way she could earn money to support the family. So I'm aware of the hardships.

I think part of the problem that people like my mother and my father faced was the fact that they were handicapped as far as their language skills were concerned. I think that is still a large part of why people sometimes are not able to enter the job market in the area they'd like to go into, simply because we don't provide them with the language training.

I think of immigrants who come into my own office who feel they've been discriminated against. Oftentimes it's because they don't have the oral or the written skills to communicate effectively and do the job. I guess I'd like your comments as to what the government can do to ensure that people coming to this country do have those skills. I don't think we do the best job available that we can at the present time.

Ms Westmoreland-Traoré: In response to the last part of your question, I think again that I would be remiss, because I know this is an area of vast policy development, discussion, negotiation and I think it is a very important subject for the continued development of our country.

On the preliminary remarks that you made, I think exchange does help us and I'm pleased that you shared the experience of your family with me. I understand more now what you're saying. I will say that the discrimination experienced by my parents was on the basis of race. There was no other reasonable requirement, bona fide or other. This was not something restricted to my family. It was for many others. There was no linguistic impediment, there was no diploma missing, there was experience and so forth. So I mention this to you. I know that you can find documentation on the continuing presence of race as a marginalizing factor.

I do know that for persons of other than British or francophone and sometimes European descent, there has been discrimination in Canada. There have been studies as to the nature, extent and pattern of that discrimination. As a result of those studies, it has been identified that race is a factor in our society which has had a historic and a continuing negative effect on the opportunity of members in our community.

Mrs Witmer: And it will always be there.

I guess on another note, when do you see the employment equity legislation being proclaimed? I'm getting a lot of questions as to when it will become effective.

Ms Westmoreland-Traoré: My executive director has accompanied me. He may be the person to answer this question.

Mr Kumar Singh: There is lots of speculation in this regard.

Mrs Witmer: That's right. I've heard June 1994.

Mr Singh: Perhaps you should look on the government bench. Perhaps they will be able to give us a better understanding. We heard April 1. We also heard the minister, Elaine Ziemba, make a statement that June 1 is not unreasonable.

Mrs Witmer: That's the latest one I heard.

Mr Singh: Yes. That's the latest that we've got.

Mrs Witmer: I appreciate that. What about the Employment Equity Tribunal? It will be an adjudication body. Who will be able to bring the complaints to that body? How is that going to work? What's the process?

Ms Westmoreland-Traoré: Again, I understand my role to be at this point to prepare for the establishment of the Employment Equity Commission. The policy and decisions concerning the Employment Equity Tribunal are being developed at another level, in another section, if you wish, of the Ministry of Citizenship, because of the arm's-length relationship which must necessarily exist between the future commission and the future tribunal. So I think there may be a more appropriate person to answer that.

Mrs Witmer: You've had no involvement in that particular tribunal?

Ms Westmoreland-Traoré: No. It was felt that it would be inappropriate, and I agree at this point, for the office of the commissioner to be involved in that, just for what may be the perception and what persons have a right to expect, that the processes will be entirely credible and that there will be a real protection for both parties.

Mrs Witmer: Are you involved in the regulations defining the subgroups?

Ms Westmoreland-Traoré: I'm not involved in defining the subgroups. We make recommendations to the Minister of Citizenship and those recommendations are then used by the minister and other policy units and authorities within government to make decisions.

Mrs Witmer: Are those going to be put in place at the same time as the proclamation comes into effect?

Ms Westmoreland-Traoré: I understand yes, the government intends for the regulations to be present. This is one of the reasons why the bill has not yet been proclaimed, as well as the other assistive materials that are being developed.

Mrs Witmer: There's been some suggestion that we could have the Employment Equity Commission established, but then as far as dealing with the complaints, we could use the Ontario Human Rights Commission to funnel the complaints through that particular body. Have you given any thought to that proposal at all, as opposed to setting up a separate adjudication body, the tribunal?

Ms Westmoreland-Traoré: I believe there has been serious consideration given to this question of the effective functioning of the tribunal, but again, I think this is a question that could be appropriately answered by other parties.

Mrs Witmer: By the government.

Ms Westmoreland-Traoré: Yes.

Mrs Witmer: I hear you saying you've been primarily involved in the work of the commission but you haven't necessarily been involved with the other bits and pieces surrounding the employment equity legislation.

1540

Ms Westmoreland-Traoré: That's correct. Public education, preparing for the setup of the commission, and

we have given advice to the government on certain policy issues.

Mr Allan K. McLean (Simcoe East): I would have a final question: How many are in your office staff now?

Ms Westmoreland-Traoré: How many persons are in my office staff? Four?

Mr Singh: We have a total of 38 people.

Mr McLean: Could you give me the breakdown on the types of people that you have, of the groups that are represented?

Mr Singh: First of all, we've got 11 permanent staff, about seven seconded staff from other ministries and the remainder are unclassified staff or temporary agencies. On the question of breakdown by subgroup, I do not have that information at this time.

Mr McLean: You have four groups identified in your brief: aboriginal, women, minorities and disabled. How many of those are on staff?

Mr Singh: I know we have representation from all these groups, but in terms of actual numbers, I don't have that information available at this point.

Mr McLean: Eighty-three per cent would be women?

Mr Singh: Possibly, but women right across the other designated groups.

Mr McLean: Thank you. I have no further questions at this time. In fact, I'd like to get into some deeper ones.

The Chair: All right. Ms Witmer.

Mrs Witmer: Are we not allowing time for the government?

The Chair: Well, we're doing 23-minute rotations.

Mrs Witmer: I thought you were going to designate five minutes.

The Chair: You have five minutes left.

Mr Rosario Marchese (Fort York): The government members are in effect giving up their time, the way the Chair has structured.

The Chair: No.

Mrs Witmer: I just wanted to be fair. I thought the commissioner was leaving at a quarter to four.

Mr Marchese: They should continue, Madam Chair.

Mrs Witmer: All right, if you don't have questions, then—

Mr Marchese: We have questions, but we'd rather give the time to you to ask yours.

Mrs Witmer: What about the survey that the employer community is going to be put in a position of carrying out? There's a lot of concern about the fact that people might not identify themselves as they should. At the present time there's no responsibility on the part of the employee to do that. They can be encouraged, obviously. There's the danger that the survey might not adequately represent the designated groups accurately. Have you looked at anything that you can do besides education?

Ms Westmoreland-Traoré: I believe that we do expect the principle of self-identification to be respected. It is set forth in the legislation, and the regulations will probably be consistent with this. However, the regulations

to my knowledge have not yet been completed.

I also know that in the work in preparing the guidelines, the question of the effective ways of going about the administration of the workforce survey will be presented, best practices will be presented to employers, and we have had some very instructive information from employer communities and their experience. For instance, the banking community has given statistics of response, rate of response.

Mrs Witmer: Yes. I've seen those.

Ms Westmoreland-Traoré: It's very high, 95%, 96%; OPS 95%. So we know that it is possible, and the most determining factor is the effective communication.

Mrs Witmer: I know certainly I've been contacted by some people who obviously do have some objections to the legislation, and it's in some of the workforces where you have a high number of white males. There's the inclination that perhaps they may not identify themselves correctly. So obviously there will be problems and those problems will have to be resolved.

Ms Westmoreland-Traoré: I think there is something rather unique, well, something that is built into the legislation, which is the joint development and joint administration of the programs. So where you have a workforce survey that is being managed jointly by union and managers, or managers in consultation with employees, I think the context is going to be very different.

I know that in the past there have been incidents of misuse of the workforce survey. I believe the examples are also there that when the union was a part of the process and the union agreed to the process and the union was a part of the determination and so forth, the results of the workforce survey were much more accurate.

Mrs Witmer: Just one point. I hope you will take into consideration what I have said, because I do believe it's important that we don't focus on attempting to legislate equality of outcome. I believe very strongly in equality of opportunity, and I think it's absolutely imperative that the government assume some responsibility for ensuring that people do have equal opportunity and that they not dump this legislation on the backs of the employers. It is an expensive—another expensive—cost on top of all the other costs of doing business in this province that we have to take into consideration. It's like pay equity. Jobs were lost. It's like the minimum wage increase. Jobs were lost. I think we really have to stop focusing on discrimination in talking about equal opportunity. I'd like to see us be much more positive, rather than continuing to blame people.

Ms Westmoreland-Traoré: Can I just say, if you wish a response—I realize it was not all a question, and as I said, I respect your position and your opinions—I think we have been trying in our educational program to communicate that the objective of the legislation is to remove barriers, is to achieve greater representativity of the community in a planned process, and at the same time the standard for compliance is, has the employer used all reasonable efforts? So it's not a question of, once goals have been set, has the employer reached or not reached those goals, but it is a question of, has the employer used

all reasonable efforts? I think to some extent this meets a part of your concern, but indeed there is a perception, which we are working to overcome, that this legislation is a quota-driven legislation.

The other question is that the government and the office of the commissioner are preparing materials so this process that employers will be required to carry out jointly will be a process supported by certain materials and so employers will have the option of managing this process themselves with the materials that are available to them, including the data, including some of the software, when it is available, and so this process will be a process over a certain period of time, which will allow them to perform and to achieve their objectives without being unnecessarily burdened.

As I mentioned in my initial presentation, I do think the benefits of employment equity far outweigh the costs. Sometimes employment equity is made to pay the price of an economic recession, which at this point is practically worldwide. In talking to different audiences, I do have to exchange so the concern of people can be properly distributed on the different difficulties we are facing in our society.

Mr Marchese: There are only a few moments, and I respect the fact that you obviously have another commitment. I will make a few comments and leave you with a statement to reflect on as opposed to a question.

I wish I could believe in this idyllic world that Ms Witmer describes, because when she says we are preoccupied with issues of race and issues of colour, perhaps gender and all the other issues around which there is so much discrimination, and that's why the Human Rights Commission is dealing with all of these issues, the fact of the matter is that discrimination is there. It isn't disappearing on its own. It hasn't disappeared. It will not disappear by and of itself. What it means is that governments and people all over have to make a strong commitment to eliminate discrimination wherever it exists. The fact that there is evidence that this is so means that we as governments and we as politicians of all stripes need to act on that. I wish I could believe that we had equality of opportunity. The fact of the matter is that we don't. That's why we speak of equality of outcome, in order to arrive at some fairness and some equality.

I wanted to make that statement. I know there's so much more that can be said with respect to that, but I would leave you with a comment to reflect on, and that is, the Pay Equity Commission and the Human Rights Commission exist and all these commissions are there. My hope is that, based on their experiences, you would be able to take all of that into account and create a

commission that will be the most effective it can be in order to be able to do this great job of dealing with systemic changes that many of us support, including Mr Curling, who supports systemic changes and speaks about that greatly. I often wish that in stating those remarks, his own government would reflect it on those systemic changes.

Mr Curling: We do that now.

Mr Marchese: Of course, when you have another opportunity again. But I would leave you with that statement, Ms Juanita Westmoreland-Traoré, and I hope you will be able to effectively create a commission that you want and that we want.

The Chair: Okay, now we have to see what the wishes of the committee are in terms of rescheduling the commissioner. If it is the wish of the committee to have the commissioner back, 10 o'clock on Thursday morning would work, because we could do an hour then and then do the report-writing, starting at 11.

Mr Curling: Yes, 10 is fine.

Ms Westmoreland-Traoré: If you don't mind, I need to consult.

The Chair: The writing is only a direction to prepare the draft, so it wouldn't take very long. It's only one agency.

Ms Westmoreland-Traoré: I will have to consult my agenda. Perhaps I can communicate with the Chairperson or with the clerk to inform you.

The Chair: All right. Thank you. If you would call the clerk's office and let us know. The difficulty is that we are only given certain days and those days are assigned to us by the Legislature. Originally we asked you to come at 2, and the idea would be that you would have been here from 2 till 5. We're an hour and a half out of the time frame you would have been scheduled for, so we would appreciate your accommodating the committee.

Ms Westmoreland-Traoré: I appreciate your indulgence and I shall communicate with the clerk before the end of the day.

The Chair: All right. Thank you. Thank you for your appearance today and we'll look forward to seeing you on Thursday at 10.

Mr McLean: I appreciate Rosario's speech.

Mr Curling: His lecture.

The Chair: Is there any other business for the committee this afternoon? If not, then the committee will be adjourned until 10 o'clock tomorrow.

The committee adjourned at 1555.

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- *Marchese, Rosario (Fort York ND)
 Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
- *Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Cooper, Mike (Kitchener-Wilmot ND) for Mr Mammoliti
Fletcher, Derek (Guelph ND) for Ms Carter
Huget, Bob (Sarnia ND) for Mr Waters
Lessard, Wayne (Windsor-Walkerville ND) for Ms Harrington

Clerk pro tem / Greffière par intérim: Bryce, Donna

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**Standing committee on
government agencies**

**Comité permanent des
organismes gouvernementaux**

Ontario Human Rights Commission

**Commission ontarienne
des droits de la personne**

Chair: Margaret Marland
Clerk: Lynn Mellor

Présidente : Margaret Marland
Greffière : Lynn Mellor



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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 9 February 1994

The committee met at 1007 in the Trent Room, Macdonald Block, Toronto.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mrs Margaret Marland): We are continuing the review of the Ontario Human Rights Commission and we welcome back the chief commissioner, Ms Rosemary Brown. We're starting today with the official opposition and we'll do 20-minute rotations.

Ms Rosemary Brown: Madam Chair, with your permission, would my staff be permitted to join me?

The Chair: Absolutely.

Ms Rosemary Brown: Also, I was wondering whether it would be possible for me to have, at the very end of the day, 15 minutes to do my closing summary, if that's okay with you.

The Chair: Certainly. The committee members may have some questions on your closing. How long is your statement?

Ms Rosemary Brown: It depends. It would be based on the questions of the day, but I would like to just wrap up with maybe 12 to 15 minutes, if that's okay.

Mr Alvin Curling (Scarborough North): I have no problem with the commissioner giving her closing without any questions after.

Mr W. Donald Cousens (Markham): I'd like to have at least five minutes following the commissioner. Then at least we get the last word.

The Chair: It probably is the prerogative of the committee to ask you the last question. You would still end up with the last word. Do you want to start at 2 o'clock doing your 15 minutes? Is it something you're going to be reading?

Ms Rosemary Brown: Yes.

The Chair: All right. Why don't we start at 2 o'clock with you reading your 15-minute statement? Is that agreeable to the committee? Okay, we'll do it that way. Mr Curling, 20 minutes.

Mr Curling: I want to welcome back the commissioner. I know the efforts she has made. She's an extremely busy person and we know that this is an extremely important review of the Human Rights Commission. Coming back again for some more—I don't want to call it questioning; it's a review.

Commissioner, we have over the week heard from some rather interesting perspectives of what people believe the Human Rights Commission should be delivering and we have—I'm sure my colleagues have; I speak for myself and my party—even a better understanding of the commission after this. I think that's why it's important to have this review: our expectations and what you can deliver with the facilities and equipment that you have.

One of the questions that came to mind as they were making their presentation was in regard to your systemic

unit area. I just wondered if you could give me an update about how you're approaching this aspect of it, how many cases have been done through the systemic unit and what strategy you're using, because I know you mentioned in your report that basically is one of the areas at the root of how we can approach any kind of discriminatory practices regardless of what areas the Human Rights Commission involves itself in. I just wondered if you could comment on that area for me in regard to the systemic unit, now that you've restructured.

Ms Rosemary Brown: As you will remember, it's one of the four areas that are covered in the restructuring. The director appointed to that is sitting with us at the table, Mr Neil Edwards, so I'll just make some broad statements about that, and if he wants to add anything to it he can.

The real root of what we do at the commission is to have decisions which are made which would be broad-based and public-interest-remedy focused. We see the difference between individual complaints and systemic complaints as being essentially artificial, that in fact individual complaints of themselves can result in systemic decisions, either from the board or from the way in which the commission handles the complaint.

If I can use some examples, even though one person or two people might complain about the way in which employment agencies respond to them, the resolution of it is to ensure that the decision affects all employment agencies, not just the one, and that the decision is systemic. Also, the way in which the commission is now working with the city of Toronto around the issue of the firefighters and their employment practices is an example of a non-adversarial way in which the commission works on systemic issues.

Another example which I'd like to draw to your attention is the decision that was brought down about the adult-only condos. Again, it was triggered by an individual complaint, but the decision that resulted from that was one that affected the group rather than just the individual.

Systemic remedies can result from board decisions of individual cases because sometimes part of the settlement agreement is that the respondent introduce some practices which have a systemic focus to them and a systemic result. So even though we appear to be, and we have certainly been accused of, focusing on individual cases, that does not mean that we're not dealing with systemic issues. As I said before, we see the division of individual versus systemic as being essentially an artificial one.

Mr Curling: Did you want to make some comment, Mr Edwards?

Mr Neil Edwards: I'm Neil Edwards, director of regional services, systemic investigation branch. I'd just like to give you a bit more information, more specifically in terms of the kinds of initiatives that we have under-

taken in the systemic unit over a period of time. We have been engaged in approximately four cases that we felt we were able to obtain major systemic remedies from.

One of them we mentioned on the first day, which had to do with the courthouses throughout Ontario, ensuring that courthouses are accessible to the disabled, not only for persons who may have business in the court but who simply want to go there to learn about what's happening etc. We were able to do that and do that quite successfully. We were also able to ensure that the government implement a telephone line across the province whereby people could call that number to determine if a particular courthouse is accessible within the province. That was one initiative.

Another had to do with two employment agencies, where we learned that these agencies were practising discrimination on the basis of race, colour etc, where they were actually not referring people to certain companies. Someone came forward to the commission with a number of allegations and also brought forward evidence in terms of the practices that were occurring. The commission decided to initiate a complaint against these two agencies, and from that we were able to obtain an employment equity program. At this point we're monitoring that program to ensure that those companies comply with the terms of settlement that we agreed to.

Another had to do with CUPE Local 43 against the city of Toronto, where women who were attempting to get into nontraditional jobs were not being successful because of a clause in a collective agreement. The commission attempted to mediate the issue, to resolve it in an informal way, but we were unable to do so, so the commission had to initiate a complaint. At this time, we're still in the process of attempting to conciliate with the local to remove that particular clause which we find to be discriminatory and which is impacting against women. In fact, it's preventing women from accessing certain jobs in the local.

Those are just three examples of the kinds of initiatives we have undertaken.

Mr Curling: Mr Edwards or the commissioner can answer this. Concerns were expressed that when there are cases that come before the commission on an individual basis and maybe a systemic problem is found, early settlement is seen to be the order of the day, first to get it off the books and, now that the individual wants that early settlement, because they want that individual problem to be resolved. If it goes in a systemic direction, they feel that it takes a long time and they feel their justice is being denied. This was expressed by a couple of presenters. Do you find that? I don't want to accuse the commission of the practice of early settlement in the sense to get it off the books, but it was expressed that it is the feeling that companies want this early settlement because the publicity would be negative to their business and individuals want it because it gives them their money and helps them to go on in their life. Do you find that as the way that things happen?

Ms Rosemary Brown: The reason for the early settlement initiative is not to get the cases off the books; it's because, as one of the presenters articulated, justice

deferred is justice denied. It really is simply a case of trying to resolve a dispute as expeditiously as possible. It has nothing to do with our statistics and trying to get it off the books.

But the fact that it has been settled as an early settlement initiative doesn't mean that the commission, if it recognizes that it is a systemic issue, cannot itself deal with it in terms of generating awareness and support around the issue. It can be handled by a public policy or public education around that issue. It can be dealt with that way.

Mr Curling: But you don't find that a company that, say, would have had a case of sexual harassment by one of the managers or so, that the fact is that the settlement would be agreed upon not because of that—would you say, "Okay, what is it that individual wants?" and the commission would say: "Here is what that individual wants. There is pain and suffering etc and all this compensation to be given." If that's the case and the company decides to pay a set amount of money because of this pain and suffering they've brought to this individual, would the case be over from that point of view, or would the Human Rights Commission continue to pursue the case to find out whether or not it's a systemic problem and pursue to resolve the matter in that direction?

1020

Ms Rosemary Brown: The first thing is that the commission has no option but to endeavour to effect a settlement. That is our mandate. We have to do that. In the process of trying to do that, this is negotiated. It's not simply a matter of the commission trying to force the two parties to come to an agreement. It should be a mutually acceptable decision as to whether the settlement is satisfactory to both parties or not.

On the other part of your question, which had to do with whether the issue is carried any further or not, really, to a large extent we have to respect the complainant's wishes. If a complainant, for example, says that as a part of the settlement we want that this issue not be made public and that it not be discussed further, we have to respect that, if that's part of the agreement.

Sexual harassment, I think, is an interesting one that you use, because it certainly is one of the younger areas of human rights, one of the emerging areas of human rights, and one that we are wrestling with in terms of even being able to analyse it and to identify it clearly in a neutral and unbiased kind of way. So I think that's an interesting one, and certainly an issue that I see the systemic unit using the body of decisions which come down from the board of inquiry as a jumping-off point to examine further within the commission itself.

Mr Curling: Moving on to a new question, presenters here also, Commissioner, felt that the role the commission has been playing as prosecutor, defence, educator, all these, sometimes conflicts with the role that really it should be playing; in other words, it is placed in a very uncomfortable position. As you said, at the time that a complaint is lodged, the companies feel there is a no-win for them, because when the person complains, they feel that they are against the Human Rights Commission plus the person who made the complaint, and they feel that

they have to get lawyers to combat the Human Rights Commission.

Is that the feeling of the commission too, that you find yourself in a rather awkward position because you then find yourself defending the complainant in some respect of carrying out that investigation?

Ms Rosemary Brown: No. The mandate of the commission is to be neutral, impartial, and that is the goal of the commission. The human rights officers who do the investigation have to accept that their role is not to take sides either with the respondent or with the complainant, but to be neutral. I was really interested, when I was reading the presentations that were made, that there were respondents who said the investigators were biased on behalf of the complainants and there were complainants who accused the investigators of being biased on behalf of the respondents. So if both sides feel there is a bias, it is quite possible that we are actually doing the right thing and remaining neutral throughout this process.

Mr James J. Bradley (St Catharines): Commissioner, is there not a presumption on the part of the commission that the person who has been accused has an onus on him or her to prove innocence? In the court of law there is a presumption of innocence until one is proven guilty. It seems to me from the representations I have had made to me by people who have had experience with the commission that it is their assumption, and there was a controversy some months ago about this, that a person must prove his or her innocence when accused.

Ms Rosemary Brown: Absolutely not. The role of the human rights officer is to be neutral and impartial. There is no presumption. The only responsibility that the investigator has is to take the complaint seriously and to begin, as mandated, to investigate it. But there is no presumption either of innocence or of guilt on either the part of the complainant or the part of the respondent.

Mr Bradley: The other question that arises is surrounding how many people will pay simply to get it off the front page. I'm interested in the experience that you would have because I asked a previous witness whether he felt on that occasion that a lot of people paid the money, made a settlement, so that they wouldn't have to go through an embarrassing trial in the media as opposed—not a court trial, of course, but in the media, and that it would be better for that person to simply pay the hush money and be done with the issue rather than go through an embarrassing public case. As we know, many in the public at the end of the day simply remember, "Oh, yes, that is the company that was accused of being racially biased," for instance, or biased against some group that the commission would deal with.

What has been the experience of the commission in terms of people willing to make a settlement before the final investigation has been completed?

Ms Rosemary Brown: First of all, the commission would not in any way influence either a respondent or a complainant to settle to keep their names off the front page. That is not the business of the commission. The business of the commission is to ensure that fairness is done, that they are neutral and impartial, that they

investigate the issue and that at the end of the day, the complaint is resolved in a fair and equitable manner.

The publicity which is generated by this or the impact of such publicity is not part of the concern or the mandate of the commission and the commission staff. The investigators know that they cannot influence a person's decision one way or another in terms of what kind of publicity they will get. They have to remain neutral investigators. That is their training. That is their mandate. That is the expectation that exists of them. That is one of the reasons why one of the initiatives the commission has embarked on is so focused on training our investigators to ensure that at all times they never, ever lose their neutrality.

Mr Bradley: Another witness also made a case for the commission acting as a better gatekeeper than has been the case in the past. It was the estimation of the witness that too many frivolous cases proceed, therefore contributing to the backlog that the commission must deal with and not allowing investigators and other members of the commission the appropriate time to deal with the genuine cases that required the full attention of the commission. It was his suggestion, again, that a lot of the annoyance with the commission would be reduced if the commission would eliminate frivolous cases at the beginning and deal with the genuine cases in a very thorough manner. Would you comment on that?

1030

Ms Rosemary Brown: As you can understand, human rights is a continually changing and emerging concern to all of us, and the commissioners have to make some really tough decisions as to what is frivolous and what is not.

Under section 34, we have a mandate which allows us to dismiss a complaint on the grounds that it is frivolous or that it has not been filed in good faith. In fact, 8% of the cases which were closed last year were dealt with under section 34 of the code. We are very aggressively looking at section 34 of the code and using it once we are completely satisfied that the case either is not filed in good faith or that it was frivolous. But there are difficult decisions that have to be made and, you know, one person's frivolous is another person's hurt.

The only thing the commissioners can do is to continue to take these issues extremely seriously and to give great weight and deliberation to their considerations as to whether a complaint should be deemed to be frivolous or whether it should be pursued. But the commissioners, in making that decision, are never frivolous. They do take the making of that decision very seriously.

Mr Cousens: Thank you very much, Madam Chairman. Let me begin by apologizing if in any way I offended you at the earlier part of the meeting with comments that had to do with one's history—

The Chair: Okay. Don't get in any deeper.

Mr Cousens: —and how long it is, in other words.

Mr Bradley: Were you abusing the Chair when I was away?

Mr Cousens: I was. I want to be disabused, that's all. I mean, people were ready to start handing her forms to

fill out and so I just—

The Chair: Your clock is running.

Mr Cousens: My clock is really running, I tell you.

We had a presentation before the committee this week by the Chinese World Journal, Wei Fu, and he made three recommendations at the conclusion of his report. I'm going to raise these as well with the honourable minister when she comes, but I'd just appreciate your comment on the three points that he had, if I may.

The first: He feels that it would be excellent if crown attorneys, who can already prosecute for fishing, traffic and other provincial offences—there is no reason why they couldn't prosecute human rights offences. He's sensitive to the fact that crown attorneys and judges aren't fully reflecting the feelings of victims of racism, so he recommends the province put the Ministry of the Attorney General in charge of investigation and prosecution of human rights offences. That's the first one that he raises.

The second one, just so you have a chance to comment on it, because you would have received a copy of his report, is he feels that the Human Rights Commission is rotten to its core, impossible to reform. "The complete dismantling of this institution would only benefit the cause of human rights. The Ontario Human Rights Commission does not work. If racism is like cancer, the OHRC is the wrong medicine to treat the disease." I'd be interested in your comment on his views when he said that.

Finally, he's concerned about the law enforcement section of the OHRC and he feels the last three parts of the bill regarding enforcement really aren't strong enough. He says, "Few would argue that to maintain safety on highways the authority can overlook the law enforcement of the Highway Traffic Act and stress public education. However, when talking about the protection of human rights many people would say that the law enforcement is not important. The priority is public education. It is my view that the respect of the OHRC can be achieved by having public education and law enforcement working hand in hand."

Those are the three points that Mr Wei Fu made. I just wondered if you had any comments on his presentation.

Ms Rosemary Brown: His first comment, about why the crown prosecutors shouldn't deal with the issue with making decisions rather than the board of inquiry, I am going to turn that over to our legal counsel because the finer points of the law baffle me. I'm going to let him deal with that.

Mr Mark Frawley: Again, for the record, Mark Frawley, acting director of legal services branch.

Proceedings at boards of inquiry under the Ontario Human Rights Code are not prosecutions, so it would be inappropriate to think of them as prosecutions. Crown counsel did act as commission counsel, as I think we discussed before when I was here, and now the commission has its own counsel who act for it at boards of inquiry. So if it's the issue of who acts, whether a crown counsel could be made available, that's a human resources issue presumably, not a legal one. As for it

being a prosecution, it would be entirely inappropriate to think of it as a prosecution. There are different rules of evidence that apply, different ways of approaching the hearing, that a criminal trial has as opposed to the administrative law proceeding that a board of inquiry is.

Ms Rosemary Brown: "This institution is rotten to its core, impossible to reform." Clearly, I'm in total disagreement with that. I believe the Human Rights Commission of Ontario is one of the outstanding human rights commissions in the world. I believe the code is certainly the strongest code that we have in this country in terms of dealing with human rights issues.

We have recognized that there are problems, which is precisely the reason why we have embarked on the changes which I discussed on February 1 when I appeared before the commission. If in fact after listening to all of the complaints about the commission and examining and doing an analysis of it, the conclusion had been that reform is impossible, as he said, that would have been our recommendation too. We would have recommended that reform is impossible.

It is because we know that reform is not only possible but that reform is taking place and is moving along successfully—slowly, but successfully—that we embarked on these eight initiatives and that we are optimistic about them.

I want to clearly state for the record that a comment which says that, "The institution is rotten to the core" is a very troubling one and an erroneous one—totally erroneous. The other statement that reform is impossible could only be made by someone who really does not understand the workings of the Human Rights Commission.

The comment he made about the enforcement: Of course we're trying to improve and strengthen the enforcement. This is the reason why again the restructuring of the commission has been embarked upon and why it is we're trying to make the kinds of changes which will improve our efficiency and effectiveness and help us to use the few resources we have more strategically. So I want to dissociate myself from the comments of this presenter.

Mr Cousens: A presentation was made as well from Lou Ronson and Karen Mock—Lou Ronson, former vice-chair of the OHRC and past national chair of the League for Human Rights of B'nai Brith. He made a couple of points here in background when he says: "It is totally unacceptable, in my view, to have several hundred human rights cases lingering for three years or more in the case load. It is equally unacceptable to carry a backlog which, on the average, could take a year or more to resolve." Would you like to make any comment on that statement?

Ms Rosemary Brown: Sure. First of all, the case load of the commission, as I stated earlier, if we are doing our work and if the commission is respected, we're always going to have a case load. We're always going to have a large case load. The goal of the commission is to shorten the time it takes a case to pass through the system. The changes we've embarked upon are definitely focusing on trying to make that happen.

I certainly agree that in the past cases have, for one reason or another, found themselves in the system for seven years, eight years, six years and that kind of stuff. We're trying to bring an end to that. Our goal is to have cases resolved before they even reach the three-year point. As I said, it's going to take us a while to do that, but the ESIs, which we hope to be done in 90 days, we hope to see more of our cases resolved that way. The more difficult ones which have to become formal cases, our goal is to see them resolved within 18 months; two years at the maximum. That's going to take time. It's not going to happen overnight.

1040

Mr Cousens: Mr Ronson also proposed that: "the equivalent of a small claims court be established, with no more than three full-time commissioners sitting as a tribunal on a daily basis, to adjudicate selected cases of lesser importance to the public interest. Such cases would not consume the considerable amount of time now spent on stale investigations by investigators and other members of staff, who are in short supply. The complainant and respondents would be required to appear before the tribunal with witnesses and counsel, if any. Counsel for the complainant would be provided, as now, by the commission. Summary judgement would then be rendered on the basis of provided evidence and/or credibility."

I have real sympathy. That idea comes through in a number of different presentations. I think it's implicit to Mr Fu's thought process. But again, I think when Mr Ronson makes that recommendation, from his extensive background with the Human Rights Commission, it brings credibility to the suggestion. I'm most interested in your comments on it and I'll be asking the minister on this as well.

Ms Rosemary Brown: Sure, I think it really merits consideration. It's one of the recommendations, as you said, that's come up a number of times. Certainly I've heard it in my meeting with community groups and in travelling around the province. It's worth thinking about.

Mr Cousens: I realize it's more our job to change that.

Ms Rosemary Brown: Absolutely.

Mr Cousens: You're also now in a position where you bring a tremendous amount of experience and thought processes to it, and so I very much want to know your thinking before we surprise you with legislation that wouldn't work.

Dr Karen Mock, who is the national director of the League for Human Rights of B'nai Brith Canada, brings forward a suggestion that I would very, very much like to do, and I don't think it requires any outside legislation to make it happen. She says that we could "make more effective use of existing community organizations, first by giving them better access to the process by granting them standing, to advocate on behalf of deserving complainants, and/or allowing third-party intervention; and secondly, by offering support to community organizations, wherever appropriate, when services are rendered to complainants, respondents or the commission itself."

Her point, to me, would allow certain groups that have

staff, organization, committed people and trained researchers available, then, to act not unlike the way Mr McLean has acted when going before the Ontario Energy Board and different other places as a respondent to be in a position to act as one that's monitoring and mentoring within the process. Could I have your comments on that one and maybe on some action that could be taken by the commission to facilitate a closer working relationship with such people?

Ms Rosemary Brown: I think that certainly in terms of intervenor status at the boards of inquiry some community groups already are exercising that.

Interjection: On variety stores.

Ms Rosemary Brown: Yes. I was hoping not to bring up the variety stores, but from what I've been told, certainly that was a good example where community groups could act as intervenors at that stage. Certainly, groups like CERA and ARCH work very much on behalf of the complainant.

The bottom line still is, though, that the commission is not advocating on behalf either of a complainant or a respondent; the commission's role is to ensure that the complaint which is filed is resolved in an equitable manner.

So although it's okay for individuals to go through a community group which will assist them in the process, the neutrality of the commission has to be protected at all times. I'm not sure you can do that if you permit groups, either on behalf of respondents or on behalf of complainants, to use the commission process as a means of battling it out in terms of the groups they represent.

Mr Cousens: I hear you saying two things: on the one part, that we have an intervenor status in a number of situations, which have become causes célèbres, and it seems to be part of that process, and indeed I think it would help in at least clarifying evidence in situations better than if they weren't there.

A group for which I have tremendous high regard is the B'nai Brith organization and its league for human rights. As a member of the Legislature, I have referred to them many times. In fact, they were an inspiration for me in a private member's bill that I've since had to withdraw that would have dealt with continuing hate propaganda that goes on. So I listen to them, and I see them as advocates in a very excellent way within our society.

What I'd like to encourage and ask you to look at, as a carry-home exercise if you can, is ways in which you could recognize certain groups like them and have them in some way as partners or aware or involved or informed where possible so that they are then not on the outside looking in but somewhere close to the inside looking out.

Ms Rosemary Brown: Now a number of these groups that you've named work very closely with our public policy unit around the development of policy in a number of areas. But you're absolutely correct that it is worth looking at maybe new ways of building links with these groups in turn. But it always is going to be in the development of policy. The commission is always going to be responsible for carrying the complaint.

Mr Cousens: Oh, I understand that. That's true with an intervenor in the Ontario Energy Board or any of those places.

Ms Rosemary Brown: Yes, sure.

Mr Cousens: It doesn't cut into the authority or responsibility or accountability of that board in the processing of its hearings.

Ms Rosemary Brown: No. But certainly in the area of public policy, we've actually relied very heavily on some of the experiences of these community groups on behalf of the groups for which they advocate in developing some of our policies around issues.

Mr Cousens: I wouldn't want it just to be policy, though. I would be happier with your answer if you were prepared and willing to look at some of the other ways in which they can have some status in the process. Now, if you take Dr Mock's review, they don't feel they have that opportunity or invitation or welcome mat; so not just the development of policy but in the institution.

Ms Rosemary Brown: And not just at the board of inquiry? They can advocate at the board of inquiry.

Mr Cousens: There are ways in which you can help facilitate that. The recommendation is based on, as I read it, a certain exclusion to their involvement. I think what really we want, not you—it's us; I mean, it's our commission—is to make sure that we've got doors open for them to participate. That's really her point. They offer case management expertise and they would like to have better access to the process by granting them standing to advocate on behalf of deserving complainants. I'm supportive of that kind of thinking from them.

Ms Rosemary Brown: As long as we can protect the integrity of the commission's neutral status and as long as our role as a carrier is recognized, sure, no problem.

Mr Cousens: I think you could.

The Chair: Mr McLean, two minutes.

Mr Allan K. McLean (Simcoe East): I have a letter from a lady in Lindsay, Ontario, by the name of Carol Kolmann, who in 1989 was injured on the job and went to WCB.

Ms Rosemary Brown: Just before you proceed any further, can I ask you whether this is a case which is still before the commission or whether it's one that is—

Mr McLean: I will get to that.

Ms Rosemary Brown: But it's important that I not discuss a case which is presently either before a board of inquiry or within the process.

1050

Mr McLean: I want to know what I should do, and that's the question I'm going to ask you, because this individual has been to the WCB chairman, she's been to the Deputy Minister of Labour, she's been to the Premier, she's been to her member. In 1991 she wrote to the Human Rights Commission, and in December 1993 she finally got her papers filed and finalized to go through to the Human Rights Commission.

What do I say to a person like that who comes to my office? She's already done everything that's possible. Why does it take so long, from 1991 to 1993, to get to

the Human Rights Commission to deal with that issue? That's the question. There are two years there from when you were first contacted until the papers were signed to proceed.

Ms Rosemary Brown: I cannot speak directly to the complaint. I can simply make a general assurance and say that it is a problem that we've run into of time between when a complaint is filed and when it's actually been dealt with which has triggered some of the changes we've now introduced. An experience of waiting two years for a letter is one that will not happen, should not happen again, because we've now got in place the structure that would make such an occurrence repeating almost an impossibility.

Mr Rosario Marchese (Fort York): I'd like to welcome all of you back here today. I want to begin by asking a question that has already been touched on, but I would like to add to that question of whether or not the commission can be indeed neutral, and of course you said that is your role. The problem is that whether you believe that or not, or whether that is the case, many of the people who deal with the Human Rights Commission believe that is not the case. We all know in politics that perceptions become the reality if that is the case.

A number of people have argued that the officers are biased against the claimants. The Canadian Manufacturers' Association of course argues that the investigator is biased, because he or she becomes the advocate for the complainant. You have a number of different sectors of society that deals with you that has different views of where the bias lies, and of course the commission says, "We're neutral."

You're playing a lot of different roles, as part of what you need to do, and part of playing those different roles creates the difficulty. Some say we should separate investigation from mediation, as part of the fact that you play many different roles, so as not to confuse what your actual role should be.

These are the perceptions that many of the people who deal with you have about what is wrong with the commission. How do you deal with that, other than saying, "They're all trained to be neutral"?

Ms Rosemary Brown: I think I mentioned earlier today that when I was reading the presentations, I also came across a number of advocacy groups that accuse the commission of being biased on behalf of the respondent. So both sides claim that there's a bias, and working on the theory that they cancel each other off, I concluded that we really were neutral. But you don't buy that.

Mr Marchese: No.

Ms Rosemary Brown: In fact, the commission's advocacy role is quite separate and independent from its enforcement role, and there are all kinds of procedural safeguards in place to maintain this separation. The perception isn't going to change, I quite agree with you, until our staff actually do begin behaving in a neutral and independent and unbiased way.

This is part of the training that they have been getting recently, within the last eight months, and part of the training that they're going to continue to get until they're

able to go out and obtain evidence and analyse whatever evidence they uncover and to do all of this in a clearly neutral and unbiased way. It's going to take time, but the process is not what's at fault here. It's that the perception is going to have to change, and that will only change over time.

Mr Marchese: The difficulty about the process of course is that many are saying that in spite of the efforts you're making, it isn't enough and you're not getting to the root problems, but that comes back to systemic issues to which you've spoken.

But I wanted to talk about the training that you have touched on. I recall correctly that you've spent about 308 days of training—

Ms Rosemary Brown: Over the last eight months.

Mr Marchese: Quite a lot of days of training. Connected to this issue of training, however, I think it was Mr Baker who said that there is inadequate training on disability issues. He says that the cases are dismissed at times because the disability is qualified as not being severe enough. I think he talks about the need to have accommodation guidelines because things seem not to have clear definition of what a disability is or should be or what is the threshold for that.

So in spite of the training that you have provided, he doesn't see any visible evidence that things have changed with respect to people with disability.

Ms Rosemary Brown: In his presentation he went back quite a number of years, if I remember correctly, in terms of the comments that he made about the commission. The training that the staff have received within the last eight months is just the beginning; it's the kicking-off. There is going to be more training. It's going to be an ongoing process until we do have the quality of staff that we want.

But the complaints about not understanding or not having a clear definition as to what a disability is I think are directed almost more at the commissioners than they are at the front-line staff, because usually when a section 34 is decided on, it's the commissioners who have decided that this is not a case which we should deal with at this time because it's not a disability, or if a decision is made that it shouldn't go to board, again, it's the commissioners who in their collective wisdom have come to that decision. There are going to be instances where we're going to be disagreeing with the advocate groups on these things. I don't think there's any way of getting around that.

Mr Marchese: But you obviously are saying that everyone is getting training on disability issues and that they'll have a better—

Ms Rosemary Brown: Eventually, yes.

Mr Marchese: So they are constantly getting training on issues of disability.

Ms Rosemary Brown: Yes. In the olden days we used to refer to it I guess as a raising of the consciousness around these issues. This is going to be an ongoing process, not just with disability but with all of the emerging human rights issues.

Mr Marchese: Of course. I did ask him whether he had met with you—he said yes—and what your response was.

Ms Rosemary Brown: I gather he was very unhappy because I hadn't convinced the government to take the guidelines and make them into regulations. I think if you want him to be happy with me, I'm going to have to throw myself on your mercy and see to it that those guidelines will be incorporated into regulations before we meet again.

Mr Curling: Sounds good.

Mr Marchese: We've got Alvin on our side.

Getting to the issue of early settlement initiative, some have argued of course that these cases are easily resolved through mediation, but they're quite different and they should not be confused with a formal complaint being filed.

When you speak about the fact that 67% of complaints are closed within six months, it turns out the commission includes in these numbers cases in which no action complaint was filed, which were resolved through a telephone call or whatever process that can be easily dealt with, and that's what we mean by early settlement initiative. Is that the case?

Ms Rosemary Brown: Yes, that's what we mean by early settlement, that it didn't move to the next stage, which would be a formal complaint stage.

Mr Marchese: But that still leaves all of the other problems connected to all the other cases, naturally, and that's what people are very concerned about. CERA has put together a whole list of complaints that are still ongoing and need to be addressed, and I'm not sure how you're dealing with that. There are two pages of complaints connected to that which you might respond to, and I want to read them as quickly as I can so that I can get your response.

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Ms Rosemary Brown: I think I have the CERA presentation.

Mr Marchese: Page 12. It would be useful to speak to those concerns, because I presume that all of these are based on case histories, and I think this study goes all the way up to 1992 or 1993; appendix A, 1989 to the present.

Ms Rosemary Brown: That's right.

Mr Marchese: If that's the case, we still have ongoing problems to deal with. Training may be getting at it, but they're not convinced that it's worked.

Ms Rosemary Brown: No, but a lot of the CERA cases are in with the task force cases. We gave a commitment that they would be closed. They are a number of the older cases, as they said, and a number of them will be closed by March 31. CERA had a whole file and a graph and all kinds of things—there, that's what I need to look at. Their cases are old cases, and they're the ones that are being dealt with. By the end of the fiscal year, a number of the CERA cases will be closed.

Mr Marchese: Okay.

Ms Rosemary Brown: Where is their graph? Okay.

Mr Marchese: Ms Brown, let me make some comments about this, because CERA provides a chart showing average length of time for human rights complaints filed with the commission. They say the investigation takes an average of 28 months, 11 months for the commission to make a decision and another 12 months until the first real day of hearings. That is a case history, and presumably you're saying all of this will change.

Ms Rosemary Brown: This is what we're changing. I mean, CERA's talking about since 1989. What we've just introduced within the last seven or eight months are different time lines, so if CERA would allow the new initiative a chance to kick in and to work for a while, they probably would find that they have a completely different graph to deal with.

Mr Marchese: All right. I understand that, and I can accept that. But they're still saying that in spite of the changes you've talked about that are happening in the commission, they still do not address some of the concerns they raise. "Complainants are discouraged from filing formal complaints, even if such would be warranted."

Ms Rosemary Brown: Just a minute. An officer does not have a mandate to discourage a complainant from filing a complaint. Under the code, we cannot refuse to accept a complaint if someone chooses to file one, and the officers are aware of that.

Mr Marchese: I remember you saying that the last time you were here, but obviously this is still an ongoing concern, because based on their history of cases they take on, presumably it still happens.

Ms Rosemary Brown: Yes, which is the reason why I asked the last time I was here that when issues like this are raised, names be attached to them. It's not enough to say officers are doing this. Which officers? What office? At what time? If I'm to look into it and investigate it, I need to know more than—

Mr Marchese: I agree. Absolutely. I often say to people, "If there's a complaint, attach a name and a face to it so that people can deal with it." I agree with that.

Ms Rosemary Brown: Right.

Mr Marchese: "Complaints of an innovative or more complex nature or which do not involve direct discrimination are discouraged." This is a statement they make.

Ms Rosemary Brown: Yes. I've read their presentation, and I really wish they had done a better job of documenting the critical issues which they raised.

Mr Marchese: By attaching specific cases?

Ms Rosemary Brown: Yes. I need to know.

Mr Marchese: I think they would be very wary of doing that in a public way, obviously.

Ms Rosemary Brown: But how do I then follow through on this? When I know the training that the officers get, and the evidence which we get from the officers is that they are behaving in the way in which they are trained to behave, how do I deal with the criticism that says, "If it's a complicated and difficult case, somebody is discouraging them from filing it"?

Mr Marchese: That's fine. I understand. For each

comment you would have the same answer, and I accept that. I also understand that they would have a very difficult time putting in writing and in a public way that kind of information. But I would urge all those who have critical objections to what is happening to meet with you, obviously, and to talk specifically about all of these cases. So continuing to read through them, I will leave them with you and then—

Ms Rosemary Brown: Let me assure you that one of the things we're doing is each day at the end of this hearing a report is prepared which is sent out right across the commission staff so they know what issues are being raised here and what comments are being made about them. So we're certainly going to follow this up and ensure that they get the full gist of the presentations, but again, specific items of criticism we can't deal with unless someone comes forward and says mea culpa, mea culpa.

Mr Marchese: I appreciate that. On the other hand, we're not dismissing their complaints—

Ms Rosemary Brown: Not at all.

Mr Marchese: —because for every complaint I always think there is something attached to it.

Ms Rosemary Brown: Yes, absolutely.

Mr Marchese: So as you wait for them to come to you and talk to you specifically about that—

Ms Rosemary Brown: Yes, the message is being reinforced continually.

Mr Marchese: Very well. I want to move on to a paper that Malcolm J. MacKillop, a partner in Borden and Elliot, has submitted to us. They've made a number of interesting suggestions about how to deal with all of the case load problem. I think they say that some efforts have been made that are useful; however, serious problems still remain in terms of how you deal with the issues. They speak about a better case management system, and presumably a more effective case management system than you already have in place. I could just refer to the page again, if you want, or ask you to look at that.

Ms Rosemary Brown: What page is that?

Mr Marchese: It all begins on page 3 here, how the commission responded, the investigation process and potential changes on page 4, case load management on page 5, where they talk about creating non-negotiable timetables. Ms Brown, I don't mind having the director respond to some of these. I think it's useful to have him talk to some of these things as well.

They speak about using informal procedures, making them adaptable, prioritizing, having pre-trial conferences and the like. If you had an opportunity to see this it would be useful to get your response to it, but based on what I read last night, by re-reading this, it seems that there's a lot to these suggestions that obviously would improve much of the work that you have begun.

Ms Rosemary Brown: The executive director will respond.

Mr Scott Campbell: Scott Campbell, executive director of the Ontario Human Rights Commission. Just

a number of points, Mr Marchese. First of all, in terms of the points that are raised in this submission, they're certainly worthy of consideration. There's no question about that.

One of the points that I made the last day I was here I will make again. What we are trying to do at the commission is go beyond dealing with case management strategies and deal with an entire organizational change agenda, so therefore it doesn't simply deal with managing the cases; it deals with managing the entire commission itself. By changing it we will make case load management or the management of the case load much more efficient and effective.

So I don't disagree that the points the council has made are worthy of consideration, but I think if we are going to turn the commission around we have to look at things beyond simple case management strategies. We have to put them in a broader context of organizational change.

Mr Marchese: I would argue that you have to do both simultaneously.

Mr Campbell: I don't disagree with that, and in fact, if you look at the eight initiatives that the chief commissioner outlined, one of them was referred to as non-legislative options for enhancing the enforcement procedures of the code, and indeed, the essential components of that set of strategies are to enhance case load management.

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Ms Rosemary Brown: Some of the recommendations that are included here are actually already in place. Certainly the pre-conference recommendation is one which is already being used prior to a board of inquiry hearing, and the settlement rate for that is extremely high; it's about 70%.

The other one which he mentioned was that the early settlement initiative didn't have a strict timetable, but that's not true. The early settlement initiative does have a strict timetable and both parties are consulted through it. They have 90 days. You can't be more strict than that, and both parties are made aware of that fact.

Again, what we keep running into in a number of these presentations are critiques of the commission based on practices of 1992, 1991, 1990, 1989, those kinds of stuff, and we have not done a very good job to date of informing the community at large of the changes which have been taking place, because the changes have been taking place.

Now that they're in place we're in a position to start sending the word out into the community about that.

Mr Marchese: I accept those internal changes as being very positive and I think that will reflect itself in the end. I also believe that a number of the presentations that have been made are very useful and good and can still add to case management approaches.

Ms Rosemary Brown: Absolutely.

Mr Marchese: Organizational change is critical, because without it case load management is insufficient, although case load management can always be approved.

Of course, many still argue that your role should change from individual to systemic. As much as you've been involved with systemic issues in limited ways, many argue that that should be your prime focus. To a large extent I also agree that those systemic changes need to be the focus of the commission.

Twenty minutes have elapsed?

The Chair: Yes. I'm not doing this; the clock is.

Just while we're waiting two or three minutes for the minister to arrive—she is here. That's great.

Just to clarify, this document was handed out this morning which is from the OHRC. It's a response to a question by Elizabeth Witmer dated February 8. In the first two lines there's a reference to 1994 which I think should be 1993.

Ms Rosemary Brown: Yes, September 10, 1993. Thank you.

The Chair: And the second line would also be 1993.

Ms Rosemary Brown: Yes. It was effective 1993.

The Chair: All right. If the committee members would note that correction we'll accept this.

Ms Rosemary Brown: Can I express my appreciation to the Chair for bringing these errors to our attention. We really do appreciate it and thank you very much.

The Chair: We just want to have everything accurate, Ms Brown. Thank you. We'll see you this afternoon at 2 o'clock and we'll start with your statement at 2 o'clock.

MINISTER RESPONSIBLE FOR HUMAN RIGHTS

The Chair: Welcome to the minister. We're glad that you're here, Minister Ziemba.

Hon Elaine Ziemba (Minister of Citizenship and Minister Responsible for Human Rights): Thank you.

The Chair: We only have 45 minutes with you so I'm at the direction of the committee. I'm presuming that the committee just wants to go into 15-minute rotations with the minister. Is that correct?

Mr Bradley: Yes.

The Chair: We'll start with the Conservatives because we started with you first thing this morning, Mr Curling, as you will recall.

Hon Ms Ziemba: Madam Chair, I have a statement first, for about 10 or 15 minutes.

Mr Bradley: That's an old ministerial trick.

Mr Cousens: Bradley was really good at that too.

Hon Ms Ziemba: Was he? You mean I'm following in his footsteps? Oh, Mr Bradley.

The Chair: Minister, I was going to suggest that if you have it in a hard copy, why don't we hand it out to the committee and they can read it? I think in fairness, when they only have 15 minutes each to talk about what they've been hearing for the last seven or eight hearing days, they might like this opportunity to talk to you and they can read your statement. We'll get the clerk to make copies of it.

Hon Ms Ziemba: Okay, that's fair enough, but if I could take an opportunity first of all to say thank you very much. I think it was the Liberal caucus that invited

me to be its witness, so I thank you very much for this opportunity to be here this morning, and thank you to the Chair because I know that you've done a lot of work on this particular committee. I want to congratulate and thank you for your initiatives in the work that you've been doing preceding this committee work and also during the time the committee has sat on this issue.

I also want to thank all the members because I know that they have expressed very good interest in what I think is so fundamental to all of us in Ontario, and that's the basis of how we proceed with human rights issues. Of course, as I've always said in the House, we must share in making sure that human rights issues are looked at and make sure that people are protected in Ontario.

We're proud of that record and I want to share with all of you that I thank you for your cooperation. I've had wonderful cooperation from my critics who have worked very hard with me on some of these particular issues. So thank you. That's what I wanted to say. Congratulations.

The Chair: Thank you for bringing copies with you.

Hon Ms Ziemba: You're very welcome.

The Chair: Obviously, your staff are doing their job and now the committee members will all have a copy. We'll start with the Conservatives. Mr Cousens.

Mr Cousens: The question I have to deal with is a very simple one: When does a case become a case before the Human Rights Commission? When persons submit a form giving their complaint, an investigator is not assigned at that point and it doesn't become a case; it becomes a situation or something else. It doesn't become a case until an investigator is assigned. Am I correct?

Hon Ms Ziemba: That's right.

Mr Cousens: I want to just deal with the time when a person submits the request for action to the time the investigator gets involved. How much time can elapse from the time a person submits the complaint to the time an investigator deals with it?

Hon Ms Ziemba: I think because the relationship that a minister has with the commission itself—and this is a very technical detail—as you probably know, the minister plays an active role in first of all dialoguing with the chief commissioner, and I've been very fortunate to have very good chief commissioners and good commissioners who run the commission very, very appropriately.

But on a day-to-day operation, if I may just ask the staff to respond to that particular very technical question. The minister does not get involved.

Mr Cousens: It leads to the second question. There's a time lapse from the time it is recorded as received as a complaint within the commission's processes and then there's a time when an investigator is assigned. The lapse between those two is one period of time.

What I want to ask is the second question that ties into it and maybe someone can help us: How many cases are sitting within that gap? Now, you don't call them cases. How many situations are there sitting within that gap? Because that really becomes another number that should go on beneath. If someone could give you some help on that I'd appreciate it. I want to talk further about it.

Hon Ms Ziemba: I think before they do this you would probably have to say that at certain times in this process there are different numbers and there are different percentages, because we get a huge amount of inquiries in a year, as you have noted, with only a small segment of those actually becoming cases.

So we might say that in any given time there would be a different number. If we can't give you specific numbers today we can certainly give you that information in the—

Mr Cousens: That's fine. What you may well have is a range of fewer in the summer and more in the colder winter when people are getting cabin fever. Maybe you could answer those two questions or someone could assist you. I'd appreciate it because then I'd like to talk to you some more.

Hon Ms Ziemba: Do you want to attempt now or did you want to come back?

Interjections.

Ms Rosemary Brown: It really doesn't seem fair that we should be cutting into the minister's time.

The Chair: Excuse me, I'm sorry. Anything that is a response, Madam Minister, that you're getting, they have to come forward to the microphone in order to be picked up on Hansard.

Hon Ms Ziemba: I see. I think the response is—

Mr Cousens: It's my time as much as anyone's; I'm prepared to take the time. If it requires someone from the OHRC to come and help the minister answer it I'd be pleased to have that.

Just while they're coming to the table, the issue has to do with, it's a numbers game that we're in in the Ontario government.

1120

Hon Ms Ziemba: Yes, unfortunately.

Mr Cousens: So we're dealing with cases. We continue to be concerned with the backlog of cases. I don't think that the public is generally aware that there is also another number that should be looked at, and maybe what I'm leading to is that when the OHRC is talking about the number of cases that are actively under investigation by an investigator, that's one number, but then there is another number of those that have not yet reached the stage where an investigator has been assigned. When we're making our report as a committee, this is a whole area that I see as a major issue with the OHRC.

I feel that there is a lack of understanding on the part of legislators and the public at large. We deal only with cases when we're MPPs, and we say, "Oh, there are so many cases before the system," but then, how many are there in the backlog before they even become cases? There is a whole area of understanding that I feel is missing MPPs. I'm most anxious that we begin to have a record of that number, understand what the number is, understand what the time frame is and how many are in that whole box.

The Chair: Do you have that answer?

Mr Campbell: Again for the record, Scott Campbell, executive director of the Ontario Human Rights Commis-

sion. I'm sorry, Mr Cousens, I was outside, dealing with another issue there, but I think I have the essence of your question.

First of all, as the chief commissioner said in her opening remarks, as of December 31, 1993, there are 2,156 cases in the case load. Those cases are broken down into a variety—

Mr Cousens: No, you missed my question. Before it becomes a case, before an investigator is assigned—I want to know how many are in the pot before a case has become a case. It becomes a case when an investigator is assigned. If a person submits a complaint, it then is received. It doesn't become a case until an investigator is assigned. The minister has just confirmed that. Is that not true?

Mr Campbell: Yes, that's correct.

Mr Cousens: All right. I'm asking, how many are in the system before the case starts? If you were to take any day that you want to choose in the last six months, how many were there that hadn't become cases that were situations that were before you because there had been letters received by people, before you started the short circuit of how much you're going to pay to get out of it? How many?

Mr Campbell: That figure I don't have, but I have the figure that I think you're looking for, which is, how many cases are in our system where there is no activity going on?

Mr Cousens: No, no, that is not my question. My question only has to do with those people who have sent letters to the OHRC, who have a situation where they're asking for an investigation and an investigator hasn't been approved.

The first question I asked the minister is, how much time does it take before an investigator is assigned? Maybe you can answer that one more simply.

Mr Campbell: The answer to the issue of how many cases are pending investigation is 808, just so we have that on the record.

Mr Cousens: No. That's fine. That's not the question I just asked, though.

Mr Campbell: I'm not trying to avoid your question, Mr Cousens.

Mr Cousens: I only have so much time. I have six minutes left and then I don't have another chance for another two years or something. My question is, what is the length of time before it becomes a case?

Mr Campbell: It varies. We have now established a time frame for ESIs, which is the first part of the process, to be completed in 90 days. So either the ESI is completed in 90 days and people sign off on that or, alternatively, it becomes a formal case.

Mr Cousens: It doesn't become a formal case until an investigator's assigned.

Mr Campbell: It doesn't become a formal case until the two parties have gone through the ESI process and said: "Look, I don't want to do the ESI process any more. I want a formal case."

The Chair: Could you identify that acronym?

Mr Campbell: Sorry, I apologize. Early settlement initiative is the explanation.

Mr Cousens: We talked about this earlier when the commissioner was before us, and the upset that I have with that, is because some people feel the pressures. Does it ever go longer than 90 days?

Mr Campbell: At this point in time, yes, it does. But we are working to bring the ESI closings, if you want to use that word, in under the 90 days. That is our commitment.

Mr Cousens: Okay. I have a situation. I'm most grateful to my colleague who is talking about an individual whose name I will not mention who, on August 6, 1991, wrote to the Human Rights Commission. I have this here: "My complaint forms were just completed and signed in November 1993." So there is a person who was, in August 1991, writing to you and it didn't even become a statistic as far as the numbers that you've been giving us as a commission until November 1993. So you're not talking just two or three or four or five months; you're talking well over a year and a half.

Mr Campbell: That's correct. There is no question that in terms of the early settlement initiative process in the past, there have been a significant number of cases that have sat for longer than 90 days. That is a commitment that we've made to this committee and we've made beyond this committee, to our clients.

Mr Cousens: Madam Minister, the question that I'm asking for you is either to provide to us or have provided to us as a committee to help us understand what's happening in the process—because if we have a gap in knowledge, the gap has to do with before it becomes a case. It becomes an example of this very person here, and I really thank Mr McLean for giving it to me. I have them elsewhere. But if you're dealing with 18 months or two years and they're not a case, that's another statistic that is part of the undermining of human rights issues in the province of Ontario.

So to the minister I'm saying I would like very, very much to receive from you at the earliest opportunity for this committee to consider in its draft of its report the number of such circumstances there are, the number of situations. We're not going to call it a case, because they don't become a case until the investigator is assigned, and also with that the amount of time it's taking now to make them become a case and how many are outstanding before they have become a case that are in the system now that are backlogged.

Hon Ms Ziemba: Yes, certainly we will provide you with that information.

Mr Cousens: Could it be in time for the committee to be dealing with our recommendations and our report?

Hon Ms Ziemba: I've been told yes.

The Chair: That's tomorrow.

Hon Ms Ziemba: Tomorrow?

The Chair: The initial drafting of the report is tomorrow.

Hon Ms Ziemba: I will take it upon myself to say that we will try, to the best of our ability, to get you all

the information that is necessary and needed. Obviously, if we can't get you everything that you request, we will try to do it as soon as possible past tomorrow.

Mr Cousens: Why is it that in the reports of the Ontario Human Rights Commission, Madam Minister, we have not had these numbers included in the statistics of the OHRC's activities and work? For example, this person is someone I would have, till recently, assumed—and I say this to Mrs Marland as well—was a case. But they're not even on the case load. So what I'm dealing with partially as a legislator is insufficient evidence in trying to deal with the whole issue. I've been going after the backlog and the cases and here it turns out we're dealing with a whole other backlog of situations which are at any different state or status in the system right now. I really challenge the ministry and say, why is it that this has not been more forthcoming as a piece of data?

Hon Ms Ziemba: First of all, I would like to preface my remarks by saying that when we took office—and I don't want to make this sound political—there were a number of situations that we saw as not being appropriately managed within the commission itself. We had looked back at—

Mr Cousens: I'm just choking here.

Hon Ms Ziemba: I know, the water is very hard to drink sometimes.

Mr Marchese: Don't state the obvious, for God's sake.

Mr Cousens: This is fun.

1130

Hon Ms Ziemba: We very quickly identified that we had to work on making sure that there was good client and customer service, if you want to use those terms. The most important thing, as we look at all of the various initiatives that have been undertaken by the commission in the last year and a half, is to make sure that the customer, the client, the person who has a case before the Human Rights Commission is looked after in a caring way, an expedient way, and is dealt with as quickly as we can.

Yes, there have been some managerial problems in the past, and we recognize that and that's why we started to do the initiatives we did. We would not have started to do these initiatives if we had thought that the system was perfect the way it existed. I agree with you that we do have to work on a number of issues, and we will continue to do so as we look at recommendations, as I look forward to what you will be recommending to us.

Mr Cousens: How many months is it from August 6, 1991, to November 1993?

Mr McLean: Two years.

Mr Cousens: It's over two years, and you're trying to speed things up. Here is a person who was making their case towards the Human Rights Commission and they were not even on the case load because an investigator had not been assigned and they were not recognized as a case.

Therefore, as MPPs we were thinking the backlog was

such and such. Here is a person who wasn't even part of the backlog that we've been worried about. So when the minister's saying that she's been very expeditious in speeding up the process, I have to say one area that we have not been looking at sufficiently is that whole area before they become a case.

To me, what I'd like to then do as part of our process as MPPs is that when we get the answer, it's something that we as a committee should come forward with some recommendations on how future recording of activity within the OHRC is being maintained and kept, so that when we're reflecting on progress and actions we will know how many there are before they become cases, how long they have been in that file and that status and how many are at certain stages in the early settlement process or any other settlement that is involved. I realize my time has expired.

Mr Marchese: Welcome, Madam Minister. The Canadian Manufacturers' Association made a submission, and one of the comments it made is the following: The investigator is biased and he or she is often the advocate for the complainant. Presumably, they see that as a problem. One of the comments they made is that the Human Rights Commission should really promote voluntary compliance with code obligations as its responsibility. Do you have a reaction to that?

Hon Ms Ziemba: I understand, obviously, that on the respondents' side there has been concern in the past that perhaps they were not ably represented at the commission or during case proceedings. We took that into account as we started to appoint new commissioners. I was very pleased that the CEO from Stelco, Mr Milbourne, agreed to sit on the commission as a commissioner and to work very hard with us as we looked at the realignment, the restructuring of the commission itself and also to work on the numbers game, as Mr Cousens was previously discussing. We are very pleased that we do have somebody from business who has very good experience on how respondents feel to sit and give those viewpoints to the commission and to be very actively involved.

I think that as we look back on the 31 years of the commission itself and why it was set up and why there was a need for the commission, we still realize that there are still incidents out there of discrimination, whether they be based on race or whether they be based on sex or ability. We as a government, as a group of people, as legislators, must always be conscious that we have not wiped out discrimination, we have not wiped out prejudice completely and why we have to still have a commission and why there is still a necessity for us to work on these particular issues.

I guess my long answer to the voluntary process is that we would like everybody to cooperate, to understand the issues, to be well educated, well informed, but there still is very much a need to have a Human Rights Commission.

Mr Marchese: Sometimes these statements surprise me, because I know that for every change that has occurred in society, it hasn't happened because people were simply nice and that because they're such good human beings all of a sudden they realize we've got to

change the system because it's too discriminatory. Nothing happens without forcing people in society to change, and in this regard I say, yes, it would be nice to promote voluntary compliance, but we know it isn't happening so we have to make it happen.

In this respect, I argue that we do need systemic changes, and I'm not the only one who argues for that, obviously. Cornish, in her report, speaks to that and many of the people who made the presentations here today spoke to that effect. I agree with them, because I believe that unless you make the systemic changes, which is the general framework, the particulars are going to take for ever and the case load will continue to add and never be dealt with.

Devoting energies to the systemic changes is useful because in the long run it will be cheaper. Many argue that the present system is expensive because we deal with individual case load management that takes for ever to get to, and if you got to the general changes, it would be cheaper in the end.

What is your view of this, given that you've heard the submissions, you've had the Cornish report and so many other people must have talked to you about this?

Hon Ms Ziemba: Obviously systemic change always benefits great numbers of people. One of the reasons we decided to bring in employment equity legislation is that's one form of a systemic change that will certainly proceed and help in the issue of human rights in the workplace. It's a very strong and large component of making sure that we end discrimination in the workplace at every level. So employment equity is an issue and part of bringing about systemic change.

There was one brief time in the former, previous government where the Human Rights Commission played with the idea of only working on systemic cases and putting aside some of the areas of individual cases, where we entered into some problems. There still is a need to look at individual cases.

Mr Marchese: Of course.

Hon Ms Ziemba: There are individual cases that come forward that make great systemic changes in the future, that come to bear on the other cases that we will hear or that we know about, and often create a lot of public attention which brings about those changes. So I think there is still the balancing between the systemic aspect of the commission and legislation that is needed for systemic change, but also to balance out the rights of individuals. The commission has to play that role. I think it's extremely important.

Mr Marchese: Absolutely. I wouldn't ever argue that we separate the systemic from individual cases, in the same way that the director earlier on talked about needing to engage in organizational change, but it doesn't mean that you obviously not deal with case management. We say they need to happen simultaneously. It's a balance, I agree. I'm not arguing for systemic changes and abandoning individual cases, because they both need to happen at the same time.

Ms Jenny Carter (Peterborough): Welcome, Madam Minister. The report from the commissioner said that

changes are being made from the inside out and that these are quite far-reaching, but quite a few of the presenters have still said that we need more drastic changes. I understand that some of the recommendations of the Cornish report are being adopted within this inside-out approach, but it has been suggested to us that some of the problems are not going to be solved in this way, in particular I guess the backlog. I wonder if you could comment on how effective these inside-out changes are going to be and whether they will solve the problem.

Hon Ms Ziemba: I think the commissioner in her comments earlier talked about the changes that have already started to occur within the commission. They've been very good changes and I think we've already seen some of those very good results. The backlog is starting to be eliminated. I think that's a good procedure. We're starting to adopt some of those changes on a very good basis.

I think as we look towards the Human Rights Commission, we always have to take into account that circumstances change outside the commission, life changes, demographics change, the world changes, and the commission has to be ready to adapt to those changes, evolve with those changes. I think when we look at the Mary Cornish report, it gives us a very good framework to start to evolve towards making those changes, to start to evolve into a commission that will be far-reaching and looking into the future.

We're very pleased that we've already been able to take some of those recommendations that Mary brought forward, incorporate them into the commission's activities on a day-to-day basis, and then look towards future building and the evolution of the commission to adapt to the needs of the larger community. I feel those changes will come about as we move in time.

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Ms Carter: I certainly share with you the feeling that a lot of good changes are taking place and that things will improve.

I was very impressed by one particular presentation that we had, and I think Mr Bradley has already alluded to some of the suggestions in this. There's a criticism that there is no limit to the number of cases that are accepted. So in a sense they're never going to win, because as they appear to be catching up on the case load, more and more people are encouraged to bring their complaints. Of course, now they're discouraged by the fact that often there's a great time lag. This person thought that there should be some tightening up as to what the commission would consider in the first place. Do you have any opinions on that?

Hon Ms Ziemba: I think first of all there will always be cases, whether we want to use wordsmith games with whether it's a backlog or whether they're ongoing cases. I would hate to think we are trying to cut down on the rights of individuals or groups of individuals. People should have a place to go to if they feel they have faced any form of discrimination. As we proceed and bring about some pretty good changes and cases are publicized, there is usually an arena then for people to feel more comfortable to come towards the commission, and, as we

saw last year, there was an increase in inquiries. One hundred and sixteen thousand inquiries in one year is an awful lot of people who felt that here's a place to go to, that they could share, that they could feel comfortable, that they would not be turned away. I think we would want to have that feeling expanded, that people do feel there is a place for them in our society, that they don't have to not share their experiences and that there's no one out there for them.

Obviously, depending on what your viewpoint is, whether you feel there is a concern about how many cases actually come forward or whether we want to just have a body that is there and hope that the numbers game is low, I would want to think that we in our society want to make sure that everyone is treated equally and fairly, so that there is a good commission for them to come to. I feel very proud when I see how many inquiries come forward, because it gives me a sense that the public at large is responding to our commission and to the good work it's doing. They certainly are trying to make those changes.

Ms Carter: There's the question of whether there should be a more systemic approach rather than individual complaints. Things like our employment equity legislation are going to take a systemic approach to making sure that some of those complaints never arise. Would you agree that rather than saying the complaints should be systemic, we're in fact attacking that kind of problem as it were at the root, as we are doing in employment equity, and there still has to be a forum for whatever complaints are still arising even after all those other things we're trying to do have made a difference?

Hon Ms Ziemba: I think in bringing about legislation, when we can identify that there is a need to bring about systemic change in employment equity, it would show that approximately 70% of the cases in the past at the OHRC have dealt with employment issues, which is an incredible amount. So we can bring about systemic change through another format and bring about that change in another way. I think as we look towards the future, there will always be evolution and change in our society, in the way we think and our attitudes, so there might be new issues that arise that we have to adapt to.

One of the things we have tried to do in the commission itself—and the commissioners have brought about these changes—is making sure that the staff at the commission are educated and have training as the new issues arise. We've put in quite a good formal procedure to address that training procedure. I think that's a good step as we think about our way of thinking now and as we see the demographic changes.

I guess one of the areas we have seen as coming forward which has not been addressed in the past is some of the cases that come forward that deal with disabilities, that deal with persons with AIDS. These are new things that happen in our society where we always have to be at the forefront. I would think that the commission, as it has been in the past for many years, is a leader and should be a leader in identifying issues, that change in our society, and to bring about that change in a way that will benefit the larger society as a whole.

Ms Zanana L. Akande (St Andrew-St Patrick): One of the points that was made is that there's often seen some kind of tug between what is systemic and whether or not many of those cases should be dealt with in that way or should be individual.

I want to talk about an issue of efficiency. When you have situations where similar cases are arising from the same place of employment, and several of them are found on an individual basis in favour of the complainant, and there are several others to continue in the same light, is there an attempt made to then group those cases, not in a way that would disadvantage them, but approach the employer, talk about the similarities and therefore remove the necessity of going through 11 cases when the first four have been found in favour of the complainant and the others are so similar?

Hon Ms Ziemba: Yes. I think that's a very good point. Under the new case management that the commission has been working on, first in the backlog track, it took a number of cases that were similar in nature and tried to address them in that particular area.

Because the minister of the day has the responsibility of appointing boards of inquiry for the commission—the commissioners give a recommendation of which cases should go before a board of inquiry—I often see cases coming together where it might be one respondent and several claimants against that respondent. So that does occur now.

I know the commission, when it looks at case management, is also looking at having certain officers who might have expertise in a type of area as well, who might have had some training in that particular arena, so that they might have a better understanding on how to deal with certain cases.

They're looking at all of those forms of case management, and I think this is a better way of client service. Although we want to make sure that individuals are protected, this does protect individual rights as well if it's done in an appropriate manner.

Mr Curling: Thank you, Madam Minister, for appearing. The Liberal Party thought it appropriate that the minister appear.

Hon Ms Ziemba: That's very kind of you. Thank you.

Mr Curling: We know you are the person who has the responsibility in overseeing the Ontario Human Rights Commission—at arm's length, of course, I hurry to put on the record.

Your colleagues have quoted the Cornish report all during the review here. Most seem to be quite favourable towards the Cornish report. You yourself, just a few minutes ago, talked about some of the positive things of the Cornish report, but basically you have not come out formally and said anything about whether or not you have accepted the Cornish report and what recommendations in it you see as appropriate. Are you prepared now to make any statement on the Cornish report, whether you're prepared to accept it or reject it or what recommendations within it you're prepared to proceed with?

Hon Ms Ziemba: First of all, I'd like to thank you

for inviting me to participate today. I appreciate the opportunity to discuss human rights and the commission itself, and I welcome this opportunity.

If you look through my statement, and I'm not going to try to find the page right now, you will notice that the statement itself addressed the Mary Cornish report and discussed in that particular statement how we see the fact that Mary Cornish had made some far-reaching and far-sweeping visionary recommendations, some of which we have already started to implement in the commission itself and some of which were being implemented, and we're pleased that we both were thinking on the same lines. Also, as I said earlier, as we work towards an evolution of how the commission will eventually look in the future and will continue to change—and I don't see the commission as being a stagnant body that should stay in one particular format for ever and ever, but should constantly change with time and with the changing attitudes and demographics. So Mary's report will certainly be always viewed as we move towards that evolution, as we work towards making sure that we have changes that are beneficial to all of our clients and to all of our people.

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People have just passed me a part of my statement, and if you would turn to page 7 and to page 8—I think you have the statement in front of you—you'll notice that I did take some time in that statement to talk about the Cornish report, because I too felt that it was extremely important to note the good work that was done on that particular report.

Mr Curling: The scepticism about asking task force reports to be done with a lot of money, the public feels that if money is being spent and they ask people to investigate and come up with a recommendation, at least they would ask of the ministry or the minister who asked for those reports to be done that some formal statement be made. As you said—we'll get to page 7 and page 8 maybe after the hearing, but there were no formal comments made. I'm glad to hear that you're saying in some respects you recognize some of the recommendations. But formally, you have not done so.

My question, though, having said that: Do you intend at all to introduce any legislation to amend the Human Rights Code?

Hon Ms Ziemba: In the past we've often spoken about the amendments that would be necessary to change the code itself, whether they were procedural amendments or whether they were substantive. At this particular time we will continue to review and to look back on some of the work we've already done with some of the recommendations that, as I said, have already been implemented. I think it's always behooving any government when it starts to implement some changes to take a look at them to see that they are proceeding the way they were intended to: if they are working, if they are getting the results that you expected to get and if that particular move is what you wanted to do. So we will continue to monitor and will bring about those changes as we want to see the timing and make sure they're done in the appropriate framework.

Mr Curling: If I understand your answer, that you are now reviewing the Human Rights Code, you have no timetable to introduce any legislation to amend the Human Rights Code. Am I hearing that from you?

Hon Ms Ziemba: No, you're not quite hearing that. I think that as a legislator—and you would understand this as well, having been a minister—you constantly review the legislation that you have in the past. You always review constantly, on a day-to-day basis. I don't think there's a day goes by where you don't look at what you want to do in the future and build towards that and see when it's an appropriate time to bring those changes about. It's not something that you put to one side and do not consider over some period of time. You're constantly keeping it on your agenda to make sure you are doing the appropriate changes that are necessary and that are needed. You're also looking at those changes that have occurred so that you understand what needs to be done in the future.

Mr Curling: I remember so well as a minister that the bureaucrats used to tell me that you're constantly reviewing, and of course as a minister we look at these things and that's why we have task forces to look into these things. I remember so well and I had wanted somehow that you would have said that, "Having reviewed," and that's where the Cornish report would be, "we've got to move forward now." It sounds so similar.

When will the regulation for employment equity be finalized and what date do you see as having the employment equity legislation act proclaimed?

Hon Ms Ziemba: First of all, the legislation itself has been finalized and received third reading and royal assent. What we are doing now is reviewing and amending the regulations as needed because of the amendments that came forward through the legislative process. We're also at the same time working on guidelines, working on educational packages, the supports that are needed for employers and employees. We are making sure that the regulations and the amendments that we're bringing about, the changes, will be workable and effective. So there will be some more onsite testing with some of the employers that we worked with in the past to make sure that this does work and that they can work with these changes. We're also trying to get the commission, its body, formalized.

I would be very remiss to say today and give you an actual date, but I think, as you can see, we are working quickly to get the act proclaimed. It will be in the very near future and as quickly as we can get all of the pieces put together.

Mr Curling: You have had draft regulations before you since 1993.

Hon Ms Ziemba: Yes.

Mr Curling: When the legislation was being passed through the House you asked for full cooperation for all of us to move ahead and trust you because the regulations will be one piece of document that really gives meat to this legislation. The Parliament has approved this. I am still sceptical about what is in the regulations, because still you are telling me you're trying to get them perfect

or trying to get them as best as possible, but they're not here yet. You have no date yet, as you said, when this document or these regulations will be so effective that it will be presented to us.

Could you say within a month? Could you say by June? The individuals out there who want to see results from this legislation are waiting patiently. The companies out there would like to put their plans in place because they'd like to know what the regulations are all about. Could you just put a time frame? Would we have it before the House resumes in March?

Hon Ms Ziemba: First of all, I want to say to you that the form of the draft regulations is there and has been very open and public. So for you to indicate that people are sceptical or worried what these regulations are all about, or that you have doubt yourself personally—that's why we brought forward the draft regulations in a very public way, so that anybody at any time can review them, talk to us about them, give their input. We had very public input into the regulations themselves.

The amendments that are taking place now are a refinement of what already exists in the draft regulations—there will not be very much surprise—and will also build on some of the amendments that we brought forward in time with the legislation so that they will match and coincide. You have to have, obviously, regulations that work with the existing legislation that you have. We are wanting, as I said, to make sure that as we do the regulations and they become finalized, any of the amendments that we are refining or changing in the regulations will work and be effective and will coincide with the legislation. I would think that would be the most appropriate manner in which to proceed.

Also, you probably would share with me that if we are going to have something that is workable, that is effective and at the same time practical, and at the same time make those changes for the designated groups that we want to have, we do have to work in a cooperative manner with all of the people who are interested in both the legislation and the regulations and make sure that those changes are appropriate to them as well as to us as a government.

We will continue to keep you involved and informed, if you would like. We had wanted to give you a briefing on this. The invitation is still open, because we welcome all opinions. If you care to have an intensive briefing we will certainly provide that for you so you can keep informed and tell your constituents how we are proceeding.

Mr Curling: I've been briefed to death but the fact is that I am still prepared to listen and to monitor the regulations. What you have said to me is you don't know the dates, you don't know when, but you are trying your best to make sure that you have proper regulations.

Madam Minister, in the presentations made here over the week the presenters have said to us that maybe there should be an arm's-length approach to the Human Rights. One of the suggestions is, should the Human Rights Commission report to the legislative committee instead of reporting to a minister or to the government?

I made some comments earlier in the week saying that

most cases are from the public sector. I was corrected to say that most cases are not from the public sector, but far too many cases in regard to human rights injustices are levelled at the government. Don't you feel that they could operate more independently rather than feel that they have to be subject to the reporting procedures, although they may not use that word, to a minister? Would you support an amendment or a law that would say that the Ontario Human Rights Commission reported to the Legislative Assembly committee?

Hon Ms Ziemba: I think the way the code is enforced at this particular time, and the relationship with government being that the minister of the day and the government of the day review the procedures but not the individual cases, it is left at an arm's-length relationship so that all parties, claimants and respondents, will get their fair day in court without political pressure. I think it's extremely important and we would not want to touch that particular area.

The case that you have made in the past, and I think you've made this before, about changing the commission reporting to the Legislature itself, would not give us the opportunity to continue to make those evolution changes that are needed to correct some of the workings of the commission itself. You know that when other commissions report straight to the Legislature, and there's only one body that does, often there are great lengths of time in between. We want to make sure at this particular time that we have a commission that works well, works well for the people, that the clients are served appropriately and that we're making the changes that will bring about effective human rights delivery service.

I think at this particular time the relationship that keeps the commission reporting to a minister and to the government gives the government of the day and the legislators of the day—all legislators of the day—the opportunity to review and, as you have so ably done and as my critic from the Conservative Party has so ably done, to be able to raise those questions in the House and ask the minister of the day to make sure that body is working appropriately.

Mr Curling: I don't see how it will impede in any way if they are separate and reporting to a legislative committee. People who violate human rights should be charged appropriately and be accountable in some respect. I'm not saying that you just cut the ties off and that we can't, just because we ask a question in the House, ever resolve any human rights issues. I don't think it does, because we wouldn't have all this tremendous amount of cases still. I don't want to use the backlog, what have you. People are rather sceptical, really, about even the justice system in Ontario because of the long waiting lists. I don't want to get into that kind of questioning now at all.

The Chair: You're out of time.

Mr Curling: Since they've said I'm out of time, I want to thank you for coming. This discussion will continue to go on in the House, as you said.

The Chair: Thank you very much, Madam Minister, for being here this morning.

Hon Ms Ziemba: Thank you, Madam Chair. May I just add that this is a wonderful view. I was distracted several times by a squirrel that has a nest out there that keeps going back and forward. It's been quite interesting. Maybe spring is on its way.

The Chair: Hopefully.

The committee stands adjourned until 2 o'clock.

The committee recessed from 1205 to 1400.

The Chair: We are back with the chief commissioner, Rosemary Brown, after our interlude this morning with the minister. We are going to start with an opening—I guess you wanted it described as a closing statement.

Ms Rosemary Brown: It's a closing, actually.

The Chair: Ms Brown has a 15-minute statement and then we'll start in rotation with questions.

Ms Rosemary Brown: Before I make my statement, I want to say how sorry I am that Mr Cousens isn't here—oh, Mr Cousens is here—because I thought what I wanted to do would be to clear up at least one of the questions which he raised just before the end of this morning's session, and that was the question of, when does a case become a case for the Human Rights Commission? I thought I could do that very simply by just walking you through the process.

I will begin by saying the commission has designed the process to assist parties to resolve a potential code violation. We've done this because we found it to be very effective in addressing human rights issues in the province.

First of all, an individual will contact one of our regional offices. This can be by telephone, by mail or in person. This is an inquiry and fits into the statistics which we gave earlier of 116,000 persons who contacted the commission last year. That's an inquiry. The intake officer then identifies whether the complaint which has been received is in fact within our jurisdiction. That done, if the individual wishes to pursue the ESI process, the intake officer will then contact the individual or organization alleged to have infringed this person's rights under the code.

As far as the statistics go, the number we have for ESI settlement, as I mentioned earlier, is 814. We have a mandatory 90-day turnaround time for the early settlement initiative, or ESI, and currently there are 814 complaints at that stage as of December 31, 1993. Those are the figures I am giving you.

Where the ESI does not result in a resolution, the complainant then has a right to file a formal complaint. At the point at which the complainant files a formal complaint and it is signed, then that person becomes part of the 2,156 complaints which we mentioned were in our system as of December 31, 1993. I'm hoping that clears up the question of when a complaint becomes a complaint. It starts out as an inquiry, and then the person—

Interjection.

Ms Rosemary Brown: Yes, it starts out as an inquiry.

Mr Cousens: It doesn't satisfy my question. I asked how many are in that limbo you talk about at any one time, the example of the 25 months.

The Chair: I think maybe what we should do, Mr Cousens, is that you can continue your questions when we get into the rotations for questioning.

Ms Rosemary Brown: Okay, fine.

The Chair: I think if you would maybe get into your statement, Ms Brown, it would probably be better.

Ms Rosemary Brown: If he would mull over my statement, then we could do it.

In my closing statements, I'd like to say that the staff of the Ontario Human Rights Commission and I have paid close attention to the progress of this committee. In particular, I've noted the information and advice that the various witnesses have presented, and in the near future it is my intention to express to each of the participants my appreciation for their thoughtful observations.

I have presented for your deliberation the eightfold path of reform which will renew the commission. The commission has a specific accountability for placing people first. To build an agency which puts people first, you begin with people. Whereas some still embrace the belief that more bureaucracy's a remedy for inefficient and ineffective public service, we know that there is no substitute for personal accountability. As I have assured the honourable members, the buck stops here, and it is here that the reformation must start. Since my arrival at the commission eight months ago, I've underscored the need to take the views of our friends as well as our critics to heart, to acknowledge our professional accountability and to get on with the task of making change happen.

In the intervening months I've had the pleasure of meeting with a great variety of groups, some of which have appeared before you over the past few days. To name a few of the groups, they include the Advocacy Resource Centre for the Handicapped, or ARCH; the National Action Committee on the Status of Women; the AIDS Committee of Toronto; the Coalition of Visible Minority Women; the Centre for Equality Rights in Accommodation, CERA; the Canadian Jewish Congress; the Chinese Canadian National Council; the Canadian Manufacturers' Association; and the board of trade, and that is an incomplete list. It has also been my privilege to speak to groups in key sectors such as the Canadian Bar Association, labour section. There will be many more meetings of this kind during the course of this year.

As you can appreciate, all the organizations we have met have specific recommendations about how the commission could better serve their specific interests, and these recommendations are often diametrically opposed to those of other groups. It is my responsibility as chief commissioner to reconcile these interests with the best interests of the people of Ontario.

This is why the commission has implemented a commonsense agenda for change. The eight organizational improvement initiatives move us closer to the people we serve, make the best possible use of our precious resources, affirm our accountability for the health of the commission and ensure that the interests of the agency support and advance the primacy of human dignity.

The need for a fundamental, comprehensive and sustainable renewal of the commission is readily apparent. The depositions you have received clearly illustrate the horns of the commission's dilemma. They convey the very issues which inspired and evoked the organizational improvement initiatives, and I would like to review the four key areas which have emerged in these proceedings specifically. They are: (1) the integrity of the commission's enforcement of the Human Rights Code; (2) the commission's effectiveness in promoting public policy; (3) the adequacy of the commission's resources; and (4) the commission's accountability.

Integrity of enforcement: We have been advised by CERA and ARCH that the staff of the commission are biased and coercive in their dealings with complainants. The Canadian Manufacturers' Association, Malcolm MacKillop, Russell Juriansz and the Fair Rental Policy Organization of Ontario affirm that the agency is biased and coercive in its dealings with respondents. Furthermore, a pathological obsession with case load reduction is said to have made the agency a "killer of cases," and we are told that officers themselves violate the code by telling prospective complainants that they have no right to file a formal complaint.

Let me reaffirm that the staff of the commission are strictly accountable for the neutral, professional and rigorous enforcement of the code. Key reforms have been implemented to ensure that there is neither coercion nor bias in the enforcement of the code. This standard is being upheld in the commission's training and development program, an investment in professionalism which is unprecedented in its scope. The standard is upheld in material detail at each stage of the commission's procedures by the agency's quality assurance system. The standard is being upheld in the commission's customer service program, which places the dignity of the people we serve above all other considerations.

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Notably, the commission's commitment to service requires that: (1) the agency provide, on first contact, a complete explanation of the complaint process and the roles staff play at various stages; (2) give guidance and information at all stages of the complaint process without prejudice or pressure; (3) apply clear, fair and objective standards and procedures when assessing and investigating all alleged code violations; and (4) the standard is being upheld and enforced by the institution of clear lines of accountability.

Mary Eberts, in her presentation, suggested that shocking delays and lapses in administrative fairness have made the judiciary intolerant of the agency and risks reversing their sensitivity to human rights.

The commission has set itself to the task of meeting the exacting standards which the judiciary so correctly upholds. Enhancing the reputation of the commission will take perseverance and a scrupulous regard for administrative fairness and for the right of parties to a timely resolution of their concerns. The commission will ensure that its front-line staff receive sound, professional support in their application of both the Human Rights Code and the principles of administrative fairness. The agency will

for the next year dedicate half of the time of a senior counsel to provide ongoing training and development in these areas.

On the whole, the organizational improvement initiatives will enable the commission to address its case load in a timely manner. We are already seeing some signs of early improvement, especially in the area of delay. You will recall the commission projects that at the end of this fiscal year, there will be less than 250 files older than three years of age in the commission's case load. Moreover, all files remaining from the task force will be closed by March 31, 1994.

The organizational improvement initiatives will also refine the analytical ability of the staff of the commission. For example, the agency is currently developing guidelines to assist in the investigation of racism.

The organizational improvement initiatives are crucial to the restoration of the commission's reputation, because they cultivate and refine the ability to address a high volume of cases, the ability to provide consistent answers to complex questions of human rights law and the ability to preserve the principles of administrative fairness.

Some of the presenters have suggested that these measures will not make a difference. They hold that the problem of the commission arises from what is said to be a basic and irreconcilable conflict in its mandate. They maintain that we cannot be both an impartial law enforcement agency and an advocate of human rights. Indeed, some of my predecessors have shared this view. I do not. It is my firm belief that the commission can be both an objective and impartial enforcer of the Human Rights Code and a strong advocate of human rights principles.

The officers of the Ontario Human Rights Commission are accountable for investigating individual complaints of discrimination in a rigorous and unbiased manner. This should not dull their sense of justice; it should heighten it. Their heightened sense of justice will enable the commission to advance the principles of human rights law. We affirm the primacy of human dignity by preserving the neutrality of our investigation and by reserving our role as an advocate for matters of public policy.

The second area of issue concerns the commission's ability to promote public policy and effective systemic change. Mary Cornish, CERA and ARCH all stated that the commission is wholly absorbed with individual cases and therefore cannot direct its attention to any meaningful systemic reform. The Fair Rental Policy Organization of Ontario, the Steelworkers and the Canadian Manufacturers' Association hold that the commission could render better service to employers, unions, landlords and service providers by developing useful public policy instruments.

A key innovation of the commission's new organizational design is the creation of a public policy and public education branch. The commission has undertaken the broadest public outreach in its history to fill the directorship of this branch. The director of the public policy and public education branch will be accountable for ensuring that the commission discharges its duty to advance and promote human rights principles as enacted in the Human Rights Code by the Legislative Assembly of Ontario.

Therefore, the branch will refine its expertise in human rights by building partnerships with employers, with unions, with service providers and with community groups. This will lay the foundation for broad public education initiatives which will foster an awareness of the requirements of the code and promote voluntary compliance on a sectoral basis.

As honourable members have noted, the commission, even at this early stage in its renewal, does more than process individual cases. The agency's success in ensuring the accessibility of the province's courthouses, its success in establishing a spirit of cooperation with the city of Toronto in the recruitment and selection of firefighters, and its success with such documents as Teaching Human Rights in Ontario, which will heighten the awareness of public and private secondary school students throughout the province, are signs of a fresh and vigorous approach to eliminating systemic barriers and advancing the principles of the code.

The third area I wish to review concerns the adequacy of the commission's resources. It was suggested to you by Mr Hasanat Syed that the staff of the commission "are doing their work at great personal cost." Mary Eberts noticed that the commission has historically received inadequate resources to answer the increasing demands for its services and the broadening of its statutory mandate. The honourable members will recall again that the agency received 116,308 inquiries last year and made 28,723 referrals.

The organizational improvement initiatives are ensuring that the commission makes the best possible use of its resources. For example, by redesigning the agency the commission reduced its number of senior executives and saved \$300,000. These funds will be invested in training, in technology and in employing additional front-line staff. The commission is doing much with less.

However, by the summer of this year we may find that additional resources are necessary. There is a natural limit to the extent one's belt may be tightened. Once this limit is reached we will not hesitate to request additional resources from the government. When that day comes it is my hope that the interest which the honourable members have shown to date in the efficiency and effectiveness of the commission will not have abated and that the commission will be able to depend on your support in our endeavour.

Allow me to conclude by affirming the importance of accountability, both as the key to the commission's effectiveness and as an instrument of social change. The commission remains fully cognizant of the fact that we report to the Legislative Assembly through a minister of the crown. As a sign and safeguard of this reality, every six weeks the commission provides the Minister of Citizenship with a staff report. The staff report is the most comprehensive regular review of the agency's activities ever compiled in the history of the commission.

By ensuring that the Minister of Citizenship is fully aware of the performance of the commission, we acknowledge and affirm our accountability to all honourable members and, through you, to the people of Ontario. But accountability is also an instrument of social change. It is

accountability which ignited the renewal of the Ontario Human Rights Commission and it is the personal and professional accountability of the commissioners, the staff of the commission and myself which has made change happen from within.

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In the final analysis, as legislators, as public servants and as members of society we are accountable for the health of our communities, we are accountable for our treatment of the least advantaged among us and we are accountable for preserving and upholding the primacy of human dignity. Thank you.

The Chair: Thank you, Ms Brown. That staff report you held up was the book that we asked last week if it could be circulated to members of the committee and you said no; is that correct?

Ms Rosemary Brown: Yes, it has a lot of—

The Chair: It's internal. That's fine.

Ms Rosemary Brown: Internal. If we have finished, I mentioned earlier my habit of changing speeches before they are delivered. I didn't make any changes to this speech and so copies will be available for members of the committee at the end of the day, if they'd like to have them, so that they can quote it back to me a year from now when I see you again.

The Chair: Thank you. That would be helpful when they're drafting their report tomorrow morning.

All right. We start with Ms Akande and Ms Carter, 15 minutes.

Ms Akande: One of the questions that was asked this morning was about repeated or similar problems, let's say a series of similar problems or cases with one employer and the kinds of steps that were taken to make for a more expeditious and efficient conclusion. I wanted to continue with that just in terms of the costs.

When these cases are in fact brought against the Ontario public service or even against the broader public service the view that is expressed by many is that the legal counsel that is afforded the OPS and the broader public sector, the financing of that comes from taxpayers' money, which puts the person bringing the case in a situation where he or she can be seen to be subsidizing the opposition.

We have recently come in with some of the other reviews, such as the rent review; the government has given the courts or the hearing body the right to provide legal assistance to those people who are bringing cases to that review. Would you think that a similar kind of practice would be helpful in people bringing cases to the Human Rights Commission?

Ms Rosemary Brown: The Human Rights Commission has a legal department—

Ms Akande: Yes, I know, but I'm talking about the people who are bringing these cases.

Ms Rosemary Brown: Bringing complaints to the Human Rights Commission? If complainants find the need to do so they can seek legal aid. That is an option which they have.

Ms Akande: It's an option that's frequently refused

or challenged or difficult to access for a multitude of reasons that I'd be happy to share with you, except that I know my colleagues have questions too. What then is the process which would give many of the people greater assurance that they could have legal aid? There's a lot of difficulty around that. It's a real issue.

Ms Rosemary Brown: The main position of the commission is that any individual should feel free to come and file a complaint without really finding it necessary to have legal counsel in doing so. They are coming to a neutral and impartial body, and upon investigation, if there is need for carriage of the complaint to the board of inquiry, the legal department of the commission does so.

If complainants believe that they do need legal assistance in order to file a complaint we really are distressed if that is the case. As I said before, they have a right to either seek their own private counsel or to seek the use of legal aid. The inability of legal aid to meet their needs is a problem that the Attorney General has to address. It's not one that the commission can deal with.

Ms Akande: And yet it becomes a real factor in the fairness of the case, the reason being that frequently the group against which they're bringing the complaint is being represented by their legal department or in fact by sometimes some very high-priced, very notable lawyers.

Ms Rosemary Brown: There is a real sense that if the human rights officers are as skilled and as trained as we expect them to be, and maintain their neutrality throughout the process as we expect them to, there really should not be a need for either a complainant or a respondent, for that matter, to need legal counsel.

Ms Akande: Do you prevent them from coming?

Ms Rosemary Brown: No, not at all. But our goal is that the Human Rights Commission should be perceived to be the fair body which delivers on the mandate of the code and should not be seen as a place that one cannot approach unless one has legal counsel.

Ms Akande: Is there some suggestion made to the employer that perhaps that counsel isn't necessary?

Ms Rosemary Brown: We don't make suggestions either to the complainant or to the respondent. The only thing that we emphasize and we emphasize over and over again is that this is a neutral commission which is interested in fairness and in justice, and that is what we strive for. All of the changes that we are introducing, all of the initiatives, all of the training, everything is designed to realize that goal. That's what we're trying to do, but we would not suggest either to a respondent or to a complainant that they should have legal counsel or that they should not have legal counsel.

Ms Akande: I'll pass over to Ms Carter, but I just want to make one comment around that: The frequency with which people must argue or present their cases that are supported by employers' often high-priced and prestigious lawyers, the less the perception of fairness is maintained.

Ms Rosemary Brown: Except that when the case goes before a board of inquiry it's not the complainant who is carrying the case; it's the commission. We do

have extremely skilled and competent lawyers who do that.

Ms Carter: After listening to all the presentations and so on I still have a concern that the commission is going to have a problem not incurring a backlog again. Obviously you did reduce the backlog at one point and you're doing pretty well, but there seems to be no belief that you should limit the intake of cases. Therefore, I think you're still open to a possibility of backlogs.

I was interested in the presentation by Russell Juriansz. He said the Ombudsman's report identified a bottleneck at the commission review stage as another factor contributing to delay. He says, "Commissioners: A Good Part-Time Job." He feels that "the commissioners...only meet for two to three days every four to six weeks." They're "unable to carefully review the files.... They have not met and observed the witnesses as have the" direct "investigators."

He also feels that the boards of inquiry are a still "better part-time job...individuals appointed as boards of inquiry are often full-time law professors who try to schedule cases on the days when they have no classes...this often results in complaints being scheduled in blocks of one or two days at a time, with months of waiting in between."

He's suggesting that there should be full-time decision-makers. He's not suggesting that commissioners be made full-time. He's saying, are commissioners necessary, apart from the full-time position of chief commissioner? He's suggesting that "the chief commissioner could be vested with full authority to deal with complaints and could delegate some or all authority to full-time staff." He says, "After all, the process is a legal one and the judgements to be made involve the interpretation of the law and the sufficiency of evidence."

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He compares the setup that you have with the Ontario Labour Relations Board, which he says has close of 50 full-time adjudicators, whereas your board of inquiry only has a part-time head and one hearing room. I guess he's looking at ways of strengthening the process of the hearings and speeding it up. I'm just wondering what your comments would be on those suggestions.

Ms Rosemary Brown: He's raised a number of ideas which I think are worthy of consideration and certainly I am sure will be discussed at great length by the elected members, and we're going to look more clearly at them.

There are a number of changes to the code which would certainly assist us at the commission in discharging the mandate, we think, more efficiently and effectively, and we are hoping that at some point there will be amendments to the code which allow that to happen.

We have no objections to there being a full-time person in charge of the board of inquiry and those kinds of things. As far as the remaking of the commission itself is concerned, the present situation gives the commissioners ample time to read the cases carefully. That is not a problem, and it's also an unfair criticism. They have ample time to read the cases properly and to be prepared for commission hearings, which occur once every six

weeks. It is a much more democratic process than giving the chief commissioner the authority to be judge and jury, so although I would keep an open mind on it, it would be a mind that is not as sympathetic towards that recommendation. But the point at which he or anyone would like to talk about some changes that could be made in the code that would make it easier for us to deal with the issues, I'd be very happy to talk about some of their ideas we have about that.

Ms Carter: I think it was noticeable in the presentations that we had that although people, as did Mr Juriansz, suggested ways it could be improved from the inside out, which is obviously what you're trying to do, nevertheless there seemed to be a consensus that something more was required, and this presentation was no exception to that. So I guess this is the crucial point, if you like: Are the inside-out changes going to be sufficient over time or are there going to be some more radical steps that maybe are going to have to be taken?

Ms Rosemary Brown: We certainly, as I said before, would be very willing to talk about some amendments to the code which we think would make the job that we do a lot easier, but as far as the initiatives that we've embarked on now are concerned, we would like to give them a chance to see whether they work or not. At the sign that they are not working, we would be very happy to come right back to this committee to say, "We've tried and this is not working and more radical measures are necessary." But we are of the firm belief that given the changes that we'd like to see, given the resources that we'd like to have, the changes will be effective.

The Chair: Dr Frankford, there are two minutes left.

Mr Robert Frankford (Scarborough East): There was discussion this morning about the role of voluntary groups, mostly in relation to their advocacy role, and it seems to me that one commission, B'nai Brith, is an old-established one, and there are a number of others that probably play an extremely valuable educational role. Obviously, as time goes on, we get more new immigrant groups that are going to use their own advocacy organizations. I wonder if you have any thoughts about ways in which you could encourage them or delegate the educational role to such groups.

Ms Rosemary Brown: I think what I mentioned this morning was that they're already playing a very important role in terms of development of policy and we'd like to see them play an even stronger role. They're already playing the role of intervenors at boards of inquiry and we'd like to see them do that even more. In the closing comments that I made, I said that certainly the linking with community groups is something which the new director of policy and public education, when she comes on board, we anticipate and expect her to do. We are very appreciative of the role these advocate groups play on behalf of the groups they represent.

The commission is neutral and the commission must protect its neutrality.

Mr Frankford: I think one can look at these groups historically, that they have played a very important role in defining the breadth of problems, besides just what you get from individual complaints.

Ms Rosemary Brown: And some groups, like the B'nai Brith, were responsible for the creation of human rights commissions in the first place, because as you know, they grew out of concerns around creed as well as race and gender.

Mr Curling: I get a feeling, Commissioner, that during this hearing you have listened very carefully and you regard this process as rather useful and beneficial. That is refreshing in some respects because I think in your opening statement you said that you are prepared to listen to any criticism, and many of us maybe only listen but what we do about it is another matter.

However, though, we here and the presenters seem to not have convinced you or influenced you in any way in regard to the commission's double role. You said that of course you're trying to be fair as you investigate and as you try to come about some solutions to cases. Most of the presenters stated that they feel that somehow in playing those double roles you cannot be completely objective. Do you still stand by that, that you can continue to be as effective?

Ms Rosemary Brown: Yes. I'm going to repeat what I said before and that is that the commission's advocacy role is separate and independent from its enforcement role and that we have procedural safeguards in place to maintain this separation. The most important of those safeguards I believe is the training that we give our investigators to be neutral when they're investigating complaints, to be thorough in obtaining their evidence and to be comprehensive in analysing the evidence which their investigation uncovers.

I maintain that there is no conflict between these two roles, that in fact our training efforts are intended to provide our staff with the skill and knowledge to understand the difference between the two roles and also to repeat that in fact we're not dealing with one person who gets the case from intake and carries it right through to the decision about whether it goes before a board of inquiry or not. From the point of entry of a complaint to the point where it reaches the commissioners who make the final decision about whether a case goes to a board of inquiry or not, there is an incredible filtering through a number of people before it actually comes out at the other end with the final decision. So there is no reason why there should be a conflict if the staff and the commissioners behave with neutrality and with independence and with skill in terms of discharging their task.

Mr Curling: As you restructure the Ontario Human Rights flow chart—and I notice that your emphasis is more on systemic and you said to investigate cases of a systemic nature. The fact is too that I also feel that the Employment Equity Commission, if it ever comes about, which deals specifically with systemic discrimination in the workplace, would be rather helpful and that other areas of systemic discrimination would be dealt with within the Human Rights Commission.

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While I feel again that you are moving towards that, I didn't get that impression from the minister when she was here. She said that previous governments tinkered with the process and it didn't work. I hope I understood

her properly, and I hope that the Hansard will prove me wrong. That she also would like to see us move much more towards the systemic approach to discriminatory practices, that you have the resources to do so, I didn't get that from the minister.

Coming out of that, I then would ask you still—and I think in your comments you stated something of the fact, or maybe it was the minister; I could be wrong—whether reporting to a legislative committee would be much more effective than reporting to a minister. Because again, although they use the term “arm's length,” the minister stated here how wonderful it is for us to ask her a question in the House and that that is accountability. To me, I don't find that as absolute accountability. Would you give any support in the direction of having the Human Rights Commission report to a legislative committee?

Mr Cousens: You know the answer to that, Alvin.

Mr Curling: No.

Mr Bradley: You never know till you get the answer.

Mr Curling: Yes.

Mr Cousens: Any bets?

The Chair: Is there a question to Ms Brown?

Mr Curling: I thought there was.

Ms Rosemary Brown: I think there are a number of questions, the first one dealing with systemic issues. As I mentioned before, Mr Neil Edwards, who is the new director for regional services and systemic issues, certainly would not agree that systemic issues are not going to be getting priority attention and that they are not going to continue to be an important part of what we do.

As I said earlier today, the division between individual and systemic is, by and large, quite an artificial one because the focus of the commission really is to ensure that the decisions that are made affect as wide a segment of our community as possible.

Your second question about whether the commission should report to a minister or to the legislative committee is really one that I think elected members need to resolve. This is a discussion that should be had by the elected members and a decision made one way or another. In the meantime, the commission is going to abide by the code, and the code is very clear that we report through a minister. We speak through a minister to the House and through the legislative committee to the people of Ontario.

Mr Bradley: I directed a question to others concerning the way the procedure is weighted. In other words, the person who is lodging the complaint seems to have all of the resources of the commission to assist in proceeding with that complaint, but the person against whom the complaint is directed does not have necessarily the financial resources to defend herself or himself against that complaint.

In many cases there are two situations. Where it's a large corporation, the corporation is named, the corporation has the ability to buy itself out of it perhaps. The individual against whom a complaint is launched may not be a person of financial resources that would allow that

person to carry out a reasonable defence.

How can we rectify this situation, and I hate overusing the words, but bring about a level playing field in terms of the resources that are provided? Because we always think of it as the big, bad employer who has committed a crime perhaps. In many cases, it may be an individual within a corporate structure or within a public sector structure who is the subject of a complaint and doesn't have financial resources to defend herself or himself against that complaint. How can that situation be rectified?

Ms Rosemary Brown: I think it's interesting that your question, which presupposes a bias on behalf of the complainant, should follow so closely on the question of member Akande, whose question presupposes that there would be bias on behalf of the respondent. This is what happens. Respondent groups—

Mr Bradley: I'm sorry, it's not a bias. It is the fact that the full resources of the commission—

Ms Rosemary Brown: The perception is.

Mr Bradley: —are available to the complainant and the assistants of the complainant, but those resources are not available to the defendant.

Ms Rosemary Brown: In fact, the full resources of the commission are available to both. In any event, we just have to keep saying this over and over again and practising what we preach, and that is that through ongoing training, through the application of quality assurance standards and through the changes in procedures and policies which we have introduced, there is going to be no bias either on the side of one or the other. The neutrality of the commission is going to have to somehow come to be accepted as a fact and as a reality. There is no other way. We are neutral. We are supposed to be neutral and our officers know that and the staff know that, and that is the way in which we are going to have to conduct ourselves, because that is the mandate which has been delivered to us by the code. We cannot and will not and must not place our resources more on the side of either one or the other party when a complaint has been laid. This is a commitment we're making. I don't know what else we can do or what else we can say, except that when we fail, bring it to our attention.

Mr Bradley: It was simply interesting that previous witnesses, and I don't think they are people who are anti-commission witnesses, seemed to indicate—one person, for instance, told me that “Well, if you're accused in a court of law nobody runs to your defence with a bag of cash, either, to assist you, so why should you expect that when you're being accused through the procedures of the commission?”

I want to go on to something else that the commission could or could not deal with and within your general purview. This committee deals with appointments to agencies, boards and commissions and on the sheet that people fill out there is a so-called voluntary section where a person must check off—and there are, I think, five different categories: (1) Male or female? (2) Are you a francophone? (3) Are you a visible minority? (4) Are you an aboriginal person? and (5) Are you disabled? It says

"voluntary," but everybody knows what it means when you don't fill it out.

Do you agree with that kind of form being presented to people who are coming before a government for appointment to agencies, boards and commissions, particularly when in my first incarnation in opposition a number of years ago it was considered to be sinful, almost, to ask a person those questions? You were pinned to the wall if you ever asked those questions about a person when you were going to have that person appointed to a position.

Ms Rosemary Brown: Yes. Section 14 of the code, of course, allows the government to do that because presumably the government is trying to ensure that the commissioners are as reflective of the community at large as is possible. So under section 14 of the code they are permitted to do that.

The second point you raised about the fact that five years or 10 years ago if such a form were presented there would be universal opposition to that is, I think, again, another example of the evolutionary aspect of human rights. It evolves and it changes and it's a dynamic. A number of things which in the beginning were accepted as not being appropriate as we become more conscious of rights and how they work and what we need to do in terms of safeguarding everyone's rights, they change too. I think that's healthy; it would be really unfortunate if human rights were so etched in stone that they would never change.

Mr Bradley: You may be interested to know that I directed that question to a woman who is a visible minority and was coming before the committee for consideration for an appointment to one of the agencies of the government. When I asked her if she was offended by it, she said she was offended by it because it would give the perception, perhaps, that she was being appointed because she fit a category as opposed to the fact that she was an extremely well-qualified, capable and good appointment being made by the government.

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Ms Rosemary Brown: I think that's her right to be offended by that. I would not have been offended by it because I know I'm qualified; I don't care what colour I am. It wouldn't bother me.

Mr Bradley: Here's a more difficult question. You may not want to answer it because it gets more into a political field a bit, but perhaps you'll be interested in commenting; I don't know.

There's a problem—and it's not simply the commission; it's a lot of agencies, boards and commissions—sometimes when people from outside look and see that people who are "friends of the government" are appointed to agencies, boards and commissions, and particularly one is—I think the Ontario Human Rights Commission is an extremely important commission, one of our most important in Ontario. Do you think that it detracts from the commission at all when the appointments that are made appear to be people who are friends of the government, friends of the New Democratic Party, for instance? I just say that because I hear people outside saying, "We

don't trust it because," and it could be, if it's a Liberal government, Liberal appointees, or a Conservative government, Conservative appointees, so I'm getting at it generically as opposed to in a partisan sense now.

Ms Rosemary Brown: I actually think I'd be much more concerned if someone said, "I don't trust the commission because the chief commissioner is an enemy of human rights."

Mr Bradley: So that doesn't bother you then?

Ms Rosemary Brown: I've answered that question.

Mr Bradley: I see.

The Chair: Thank you.

Mr Bradley: You must have been in cabinet to answer like that.

Mr McLean: Ms Brown, last year the Human Rights Commission issued a policy paper claiming landlords were practising discrimination by insisting that tenants provide information on income. It said the income earned for rental application was nothing less than a screening tool used by landlords, so it was contrary to human rights legislation. Could this committee get a copy of that directive?

Ms Rosemary Brown: Would you like a copy of the paper?

Mr McLean: Yes.

Ms Rosemary Brown: Would that be possible, Scott? The executive director says it's possible.

Mr McLean: Thank you. The Cornish report: I presume you've probably read some of the recommendations. In the overall, do you agree with most of them?

Ms Rosemary Brown: I agree with the establishing of the Cornish commission, the examination that was done and the general principle that was put through. A number of the recommendations which did not call for legislative changes have actually been incorporated and have been part of the thinking that went into the development of our initiatives. I have a profound respect for Mary Cornish and for the work that she's done.

Mr McLean: I have one recommendation that I would like to read to you and it's recommendation 85 on page 232 of the Cornish report. It says, "The commission should adopt a more open, cooperative relationship with community groups and individuals with human rights expertise and allow them to prepare and develop their own claims, and participate in direction of the investigation, settlement and appointment of the board of inquiry." Do you agree with that recommendation?

Ms Rosemary Brown: No.

Mr McLean: Are there any others in here that you don't agree with?

Ms Rosemary Brown: I haven't got a copy of the report with me and there are actually quite a number of recommendations that she made. I'll tell you, though—

Mr McLean: It's interesting because she doesn't agree with it either.

Ms Rosemary Brown: Is that because great minds think alike—

Mr McLean: It probably does.

Ms Rosemary Brown: —or fools seldom differ?

Mr McLean: So I'm wondering what the value of the report is when you have a report signed by the chair of the task force that makes these recommendations and then comes along and doesn't agree with what her recommendations are.

Ms Rosemary Brown: I think it shows that she has an open mind and she's capable of—

Mr McLean: Why would she put that in there?

Ms Rosemary Brown: She's capable of changing her mind. There are a couple of other recommendations, since you ask, though, that I could probably mention. The recommendation dealing with direct access for all claimants to the tribunal for hearing is also one which I think would need some further thinking about before we would be willing to endorse that.

Mr McLean: So you will be taking into consideration all those recommendations?

Ms Rosemary Brown: Yes, before we would endorse that.

Mr McLean: Are you familiar with the CERA group?

Ms Rosemary Brown: Yes. They met with me, actually.

Mr McLean: Are they a fair bit of your workload? Do they cause you a great workload?

Ms Rosemary Brown: Actually I think it's wonderful the work that they do on behalf of the group they represent, yes.

Mr McLean: I guess the last time we had the opportunity to speak with you was the day you were being appointed and you were before the committee on government agencies dealing with your appointment.

Ms Rosemary Brown: Yes. I hadn't met with them at that time, but I have met with them since then.

Mr McLean: You were, at that time, going to move to Toronto. Have you moved yet?

Ms Rosemary Brown: Yes, and I don't know—actually when I was appointed, I was assured that it never ever got very cold in Toronto and I've been living with 41-degrees-below weather. I'm wondering if I should renegotiate my contract.

Mr McLean: You think you're overpaid, do you?

Ms Rosemary Brown: No, I think I'm overfrozen. That's what I think.

Mr McLean: It's that cold air that causes it.

Ms Rosemary Brown: Yes.

The Chair: Mr Cousens, 11 minutes.

Mr Cousens: When you're making your report about the buck stops here, the belt will be tightened and financial accountability, in your position as a full-time commissioner how much time would you spend as commissioner?

Ms Rosemary Brown: My day usually starts at about 10 to 6 in the morning.

Mr Cousens: At the office?

Ms Rosemary Brown: No. Well, I have to get up and get dressed to get to the office. It usually ends—and my

bedtime reading is invariably commission reading—around 11:30, quarter to 12. I am a full-time commissioner.

Mr Cousens: Are you carrying out other responsibilities for the federal government on another board?

Ms Rosemary Brown: Yes.

Mr Cousens: Does that overlap what you're doing?

Ms Rosemary Brown: No, no.

Mr Cousens: Is it a different commission?

Ms Rosemary Brown: The Security Intelligence Review Commission, and this was negotiated prior to my taking this, is that it is a day without pay, which I do on behalf of the federal government. This was cleared by both the federal and provincial governments in order for me to do that.

Mr Cousens: So one day a year is that?

Ms Rosemary Brown: No, no, no. It's one day a month except for July, or if I happen to miss a date because I am appearing before the commission, as I am today, because the committee is meeting in Vancouver today and I'm here or if there's a commission hearing.

Mr Cousens: I guess the only other question which isn't easy to ask but—

Ms Rosemary Brown: I just wanted to tell you that the normal expectation is that I would work, I guess, a 37½-hour week, which I don't. My weeks are much longer than that. I'm not under any sense at all that the commission is being shortchanged in terms of the amount of time that I put into it.

Mr Cousens: The questions I'm asking don't assume that either.

Ms Rosemary Brown: Oh, good.

Mr Cousens: The package that you had to become chief commissioner: Did it include anything other than the salary? Were there any other tea and travel and lodging or other services that are provided with the job or is it primarily your salary?

Ms Rosemary Brown: Just my salary. As far as I know, I am covered by OHIP—am I? I think I'm covered by OHIP and the usual kinds of other—I don't know what else I'm covered by.

Mr Cousens: Okay. No, that's fine.

Ms Rosemary Brown: I'm sorry about that.

Mr Cousens: No, no.

Ms Rosemary Brown: I should probably pay more attention to these things.

Mr Cousens: You should.

Ms Rosemary Brown: You never know when I'll need it.

Mr Cousens: One of the questions that came through from Ms Witmer, which to me—

Ms Rosemary Brown: Which one was that?

Mr Cousens: —and the correction that was made by Ms Marland, the Chair, "The commission's moratorium on public education, which was put into effect effective September 10, 1993"—is that the corrected date on it? How could the commission have brought in such a

moratorium when, in your fundamental tenets of the commission, public education is one of the primary responsibilities?

Ms Rosemary Brown: The commission was faced with a couple of dilemmas. One was we were not totally convinced that the public education process in which we were involved was really the best, that we needed some time to re-evaluate it, look at our strategy and generally fit it into the overall organizational improvement activities to be sure that in fact it is being carried out in the best possible way. I think that with the coming on board of the new director of public education and public policy, we will probably find that we might do things differently.

1500

The other thing was that the moratorium, when it was introduced, was to be effective until March 31 and it was to apply to the regions only, not to the main office. The commissioners and myself, as well as the directors, still do public education under certain and specific circumstances. My own preference is that the commissioners in fact should be doing more of the public education than they are doing at the present time, not less.

I gather that there were three requests which we received which were turned down and three out of four formal requests to the commission for a public education engagement which were turned down, but as I said, as of March 31 the moratorium will be lifted for the regions—

Mr Cousens: We have that information.

Ms Rosemary Brown: —and when the new person comes on board we may have a completely different way of dealing with the whole question of public education.

Mr Cousens: I want to follow through a little further on the question of Mr McLean's constituent. I'm reading from her letter, "On August 6, 1991, I wrote to Human Rights." I'm keeping all the names of people out of this. "My complaint forms were just completed and signed in November 1993. The contravention ground for discrimination was sex and handicap."

Are there any cases in your files that have been there in that range of time that are already on the pre-case level? What we're talking about is well over two years before it became a case and before it became a statistic that the Legislature would deal with. Would you have any others right now that have been in the box as long?

Ms Rosemary Brown: No.

Mr Cousens: What would be the longest that some have been in waiting before they become a case?

Ms Rosemary Brown: I think the detailed question around time I'm going to turn over to Neil Edwards for him to deal with. I just want to say, before turning over to him, that as a result of the new initiative which we've put in place, there are no cases at this time which are not covered by the statistics which you have in front of you. Every single case in the commission has been accounted for and covered by the statistics.

Mr Cousens: But those are cases that have an investigator on them, but there are people who are not cases. We understand the definition of when it becomes a case is when an investigator is assigned.

Ms Rosemary Brown: No, no, no. You see, this is the reason why I tried to explain at the beginning of my comments what happens. In fact, at the point when a person makes contact with the commission, in any form—air, land or sea—that's an inquiry; that is not a case. At the point when an intake worker sits down with the person who has made the complaint and identifies that it does in fact fit into our jurisdiction and indicates that they are willing to embark on an early settlement initiative exploration with us, then it becomes an ESI. At the point where they say, "I don't want an early settlement initiative; it's not working for me. I want to file a formal complaint," then it becomes a formal complaint.

Mr Cousens: What do you call them before they become a case? What's the official term you use?

Ms Rosemary Brown: An inquiry, and there were 116,000 of those that we dealt with last year.

Mr Cousens: If you take the bell curve on inquiries as they come through, I want to deal with the longer-term side of the equation because some could be dropped very quickly.

Ms Rosemary Brown: And some are referred; 28,000 got referred out to other—

Mr Cousens: I've seen those statistics, but what concerns me is Mr McLean's cry for help from someone who had this extended time.

Ms Rosemary Brown: That's possible, you know. It's possible that between 1991 and 1993 that happened. What I'm talking about now is that at this point in time, as of December 31, it isn't happening.

Mr Cousens: What is the longest length of time before an inquiry will become a case and an investigator is assigned to it?

Mr Edwards: If I may answer that, Mr Cousens, once it becomes a formal complaint—

Mr Cousens: When does it become a formal complaint? It's an inquiry I was asking for, to come to the stage where it becomes a case. I'm saying you've got the beginning of the inquiry to the end of the inquiry, when it becomes a case.

Mr Edwards: The inquiry comes in, we determine whether or not we have jurisdiction to deal with it, a 90-day period in which—

Mr Cousens: I understand that. I'm asking the length of time. I understand the steps that are taken in there, but when you have someone who's had this length of time before, so much time—you see what happens, when a person has a problem, who knows how many things can happen from the time they initiate their inquiry to deal with an action? People in the office may have moved or transferred or closed down. So many things happen as time elapses. So I'm anxious about that whole window of the time frame, from the beginning of the inquiry to the beginning of when it becomes a case.

Mr Edwards: If I may try again, our procedure now requires that someone has the complaint, it's dealt with through the ESI process and there is a 90-day period. If it's not resolved within the 90-day period, it then becomes a formal complaint. After that 90-day period it

could sit—I mean, this is a reality—for about a year before we actually assign someone to it to investigate it. That is the time frame we're working with at this point.

The Chair: Thank you. That's the end of the time for this round. What is the wish of the committee? Do you wish another round?

Mr Curling: I don't need any more.

Mr Norm Jamison (Norfolk): I don't need any more.

The Chair: All right. If there are no further questions, thank you, Ms Brown, for your appearance before the committee and thank your staff who've been in attendance during the review. It's been a valuable contribution to the review of your agency.

Ms Rosemary Brown: Thank you. I appreciate it.

The Chair: For the sake of the committee, I just have a couple of brief announcements. Ms Juanita Westmoreland-Traoré is able to be here at 10 o'clock tomorrow morning. You invited her to come back tomorrow at 10, so she will be here for an hour tomorrow. Then at 11 tomorrow we will start giving direction to Mr Pond for drafting the report on the Ontario Human Rights Commission. If that isn't finished by 12 o'clock, we may resume again in the afternoon, at 2. That will be up to the committee. Are there any questions?

Mr Curling: I know that the Hansard has been really working very hard, and in order to do some of the recommendations for our report writing, I was just wondering if there's any way we could get some of the Hansard back, even in draft form. I spoke to Hansard and they were concerned about the amount of work they have.

Interjection.

The Chair: No, no, but I'm sure Mr Curling spoke to somebody else in Hansard.

Interjection: When will they be ready?

The Chair: They are about a week behind, apparently, at this point.

Mr Curling: Is there any way that we could actually ask for—

Mr McLean: An Instant Hansard.

Mr Curling: Or a delay for the report writing for a week?

The Chair: Apparently it's the Instant Hansard that is behind at the moment.

Interjection: The Instant Hansard takes about a week, yes.

Mr Curling: Could we wait a week to write the report? Is that something that—

Mr McLean: We'll give them some direction tomorrow and then they'll write it anyway.

The Chair: The thing is, tomorrow you're only giving direction for the initial draft. Then you will receive Hansard, and then you can come back and give further direction on Mr Pond's initial draft.

Mr Curling: Okay.

The Chair: So there will be time, I think, to refer to Hansard.

Thank you very much. The committee stands adjourned till 10 o'clock tomorrow morning.

The committee adjourned at 1510.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

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- *Carter, Jenny (Peterborough ND)
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- Mammoliti, George (Yorkview ND)
- *Marchese, Rosario (Fort York ND)
- Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
- Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Akande, Zanana L. (St Andrew-St Patrick ND) for Ms Harrington
Cooper, Mike (Kitchener-Wilmot ND) for Mr Mammoliti
Cousens, W. Donald (Markham PC) for Mrs Witmer
Jamison, Norm (Norfolk ND) for Mr Waters

Clerk pro tem / Greffière par intérim: Bryce, Donna

Staff / Personnel: Pond, David, research officer, Legislative Research Service



Legislative Assembly of Ontario

Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Thursday 10 February 1994

Standing committee on
government agencies

Ontario Human Rights Commission

Draft report

Chair: Margaret Marland
Clerk: Lynn Mellor



Journal des débats (Hansard)

Jeudi 10 février 1994

Comité permanent des
organismes gouvernementaux

Commission ontarienne
des droits de la personne

Rapport préliminaire

Présidente : Margaret Marland
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Thursday 10 February 1994

The committee met at 1006 in the Trent Room, Macdonald Block, Toronto.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair (Mrs Margaret Marland): Good morning. I would like to call to order this meeting of the standing committee on government agencies. We will continue our review of the Ontario Human Rights Commission.

EMPLOYMENT EQUITY COMMISSION

The Chair: We welcome back again this morning Ms Juanita Westmoreland-Traoré. Thank you for accommodating your schedule to complete your Tuesday afternoon visit with us, Ms Westmoreland-Traoré.

I have one request of the committee. Ms Witmer is on her way from Kitchener or Cambridge. She is behind an accident so she asked, if possible, whether the PCs could go third in rotation. Since Ms Carter's just catching her breath, shall we start with the official opposition?

Ms Jenny Carter (Peterborough): Sure.

Interjection.

The Chair: You're a prize anyway, Alvin, aren't you?

Mr Alvin Curling (Scarborough North): Normally. You've done this to me a couple of times, Madam Chair, but what a pleasure it is, again hopefully; I emphasize "hopefully."

Welcome, commissioner, again to the committee. I personally felt that, your being the last individual appearing before us during the hearings before we start giving instructions about the report, will be extremely helpful to us. I think your first presentation was extremely helpful.

One of the things I was delighted about was making it pretty clear what the Employment Equity Commission would be all about. There is confusion outside about whether one individually can complain to the commission and look after individual complaints. I think you made it pretty clear here that the commission will deal with systemic issues, more or less; we want to call it the cooperative approach.

We had asked and I had asked the commissioner of human rights when she was here yesterday—she gave another excellent presentation—about some of the overlapping areas. I just wondered if you could comment to us. I know that in your area you're concentrating very much in getting the commission on its feet and running. But there are concerns out there in the areas of pay equity and employment equity and all the other equity areas that there may be some overlap, and about whether they could have them streamlined. Do you feel that bringing all those equity issues under one would be helpful, or would it be back to the clustering or what we call the backlog happening there? Would you think it would be effective to bring the equity groups together under one umbrella?

Ms Juanita Westmoreland-Traoré: Thank you very much for your welcoming remarks this morning, both to the Chair and to Mr Curling. I will take it in the positive sense.

What I wanted to say is that I believe that because we do share common objectives, the Human Rights Commission and the Employment Equity Commission, we have to work closely together. There has to be a collaborative effort. Where possible, we will be able to exchange information and take approaches which are joint.

I know that under the Human Rights Code as it presently is, there is discretion for the commission to refer certain matters to other tribunals when it thinks it is more appropriate for them to be dealt with by another tribunal. I believe that may be a situation. They may use that clause that already exists. I do believe, however, that the work of the future Employment Equity Commission is quite important, quite vast. The mandate is quite specific. It relates to employment. It focuses on systemic discrimination in employment. We are also meant to give support to a great number of workplaces in Ontario.

In order to do this work effectively and to take into account, really, the needs of the employers and to work in a proactive way, we do need a commission and we do need resources dedicated to that. It would perhaps be putting some of the effectiveness of the employment equity objective in jeopardy if we were at this initial stage to go beyond the collaborative, the assistive, the formative and the exchange process.

I know from reading remarks by the minister that there is an effort to provide greater administrative integration, merging, common resources, common facilities to some extent. That is because of the needs of the present economic situation of the government and of the economy of Ontario. So we work within that context. At the same time, I believe we maintain the objectives, and the marshalling of the resources will be done in such a way as to be most effective.

In some instances, when you have a very large organization, you can actually lose. I know there's a principle of economy of scale, but on the other hand, in a very massive organization you can sometimes have duplication, you can have overlap. You have some of the downsides of the largeness: You don't necessarily have the same direct approach nor the same supportive approach to the different branches and the different aspects of the mandate. Mandates come into competition, priorities have to be set, and sometimes one of the newer and perhaps less developed initiatives does not get the attention it needs.

This initiative obviously needs to be developed, needs to be nurtured. Specialization is required, attention. For all those reasons, I would say that it is important we avoid duplication, but it's also important that the Employment Equity Commission go ahead and fulfil its mandate.

Mr Curling: If there is one thing we have learned from the Human Rights Commission, it is that if we haven't got the proper resources and don't use the resources that we have effectively, we could have the image of the commission being, if you want to call it, destroyed in a way. Right now the Ontario Human Rights Commission has been in a bad state in the sense of its image outside, but it's been improving over the last couple of years. I feel the commissioner presently there is doing her best to turn that around, creating a new commission now which is very important.

I should say that my party is very strongly behind employment equity and so is the leader—

Mr Rosario Marchese (Fort York): Hear, hear.

Mr Curling: —sometimes to the disbelief of the government, which believes that we are not here for legislation and to have the best legislation in place.

Does the delay of the regulation itself create a problem for you as a commissioner as you develop and bring this commission on stream? Because it's been so long awaited, do you see that as, I won't call it an impediment, but does that delay pose a challenge to you?

Ms Westmoreland-Traoré: I think everyone is awaiting the dissemination of the regulations. Obviously, it is going to be very important to us, because the bill is going to be amplified by the regulations. I think in the normal course of events, regulations follow the adoption, the passage of legislation. In that sense, the regulations are not delayed. We are awaiting the regulations.

Mr Curling: Yes. We had the opportunity of having the minister here. We call it an opportunity because she seemed to think that actually coming before the committee was—I don't know. From her, the impression I got was that it was rather unnecessary, that we could have gotten all the information from other commissioners, which we did.

I think she put some light to some of the questions we wanted to get answers to. We asked her about the regulations. As a matter of fact, she did not answer. I wish I had the Instant Hansard to see that I am wrong and she gave me a precise answer. What I got was no precise answer. The anxiety in the community is, when will this regulation be out? I won't ask you that, when the regulation will be out, because the fact is that it all depends on the government itself, when it wants to do this timely.

I gather that you were brought on board with your expertise, which is quite respected in the community. Is your part of the regulation in advising the government, or are you still in a sense amending and consulting to bring the final part of the regulation into being?

Ms Westmoreland-Traoré: We have an ongoing relationship with the minister. I, in particular, have an ongoing relationship with the minister, so I do advise the minister on questions on different issues as they are brought to my attention.

Mr Curling: It is with the minister now. In other words, you have done all you can. You're waiting for her in any way if there any more questions. What I'm trying to get at is that I'm not quite sure if the regulations are—

the fact is that the minister told me last year that the draft regulation is something we could go on, it's before us and it's fine. That was 1993. This is 1994 and I'm still getting from the minister that the draft regulation is still being consulted on, that people are still consulting on this. We want to get an idea when this will be in place. I'm not quite sure when this will be ready. Maybe I could ask it in this way. Do you think the regulation will be completed by this year?

Ms Westmoreland-Traoré: That's speculative. I'm not in a position to answer that question. I know that intense work is being done to complete the regulations. I know that some of the work is as a result of amendments that took place in third reading of Bill 79. I know that there were also submissions made to the minister, submissions up until October 29, following the circulation of draft regulations. So there is policy work, to my understanding, being done. I cannot tell you when the regulation will be adopted by the government and disseminated.

Mr Curling: Commissioner, do you employ people for the commission or is this employment done through the minister or so, those who are on your staff? Who does the employment?

Ms Westmoreland-Traoré: I have an executive director here. I think he is better in answering these questions.

Mr Kumar Singh: The staffing that we've got right now is the responsibility of the office of the commission to hire.

Mr Curling: Do you have adequate resources in personnel to do the job that you're asked to do?

Mr Singh: Most definitely no.

Mr Curling: Has that appeal been made to the minister? I presume that's where the resources, the funds, are coming from. Have you made an appeal to the minister?

Mr Singh: My appeal would normally go to the commissioner, who has regular meetings with the minister as well as with the deputy minister. I'm sure the commissioner has mentioned the lack of adequate staffing.

Mr Curling: Commissioner, you have done so?

Ms Westmoreland-Traoré: I have spoken to the minister on issues relating to the development of legislation policy. The question of staffing is not a question that I address in a specific way with the minister. The question of staffing and the administrative resources are the responsibility of the deputy minister, so those concerns are raised at the level of the deputy minister.

1020

Mr Curling: We have identified then that there are inadequate staffing resources in the commission, as the executive director stated. That is what I suspect too. It seems to me the minister's commitment to employment equity—I think, as some fellow from England said, "Give me the tools and I'll do the job." I would hate to know that this strong talk of employment equity, which we all believe in, which I think all parties here believe in, and we fight for the proper resources—it seems to me they are not forthcoming in some respects.

We would hope that the deputy minister, whoever gets those requests, whether the commissioner, the deputy minister or the minister, be told that there are not adequate resources available to do the kind of job they're asked to do. Because if at the beginning this is the case, can you imagine the enforcement aspect of employment equity, when they say, "It's a time of restraint and we don't have those resources"?

Ms Westmoreland-Traoré: Mr Curling, maybe I can just add one note that my executive director has passed to me, and that is that as a new initiative the commission is now being structured and the administrative documents are going through the administrative channels, so there are applications pending to be examined by the authorities within government. This process is being looked into. That's the position I wanted to make.

Mr Curling: Could I then request that we get a list of all those who are employed with the Employment Equity Commission, their titles, and as a matter of fact, maybe their breakdown according to their ethnicity? That's what it's all about, so that in our report writing, whether there is any recommendation or suggestion—I'll be right up front with you. I think this committee is the one that can assist you in getting the job done, if the government will listen, because we'll identify and then make those recommendations and then we will make sure that the deputy, the minister or whoever should get those messages will hear them from this committee. Is it possible for us to get that this afternoon?

Ms Westmoreland-Traoré: We can information on staffing. Ethnicity I think is a question that the director will look into with the manager of employment equity, because we certainly need to respect the rules on that question.

Mr Curling: One of the things, then, is that employment equity is asking that of companies. I'm wondering if the Employment Equity Commission itself is respecting that. We cannot ask people to do things we're not ready to do ourselves. As a matter of fact, you should be so ready that we would have that available. I would like to have that to see how responsive you are to some of the things that are laid down by the government in the guidelines it has laid down for you to ask other companies to obey.

Are you saying that you may not be able to provide to me the breakdown of ethnicity or sex this afternoon? I would also ask that you break it down by sex, whether or not we could have that to evaluate.

Ms Westmoreland-Traoré: As I have stated, we will consult with the manager of employment equity and we will take direction from the employment equity services of the government. The employees in our office are members of the Ontario public service, so the rules of the government and Management Board secretariat apply.

We know that in our office at present we have approximately 18 permanent classified staff. These are persons who either were recruited by us through competition or who were seconded to our office, most recently from the Ontario women's directorate and again, lately, from the centre for disability and work of the Ministry of Labour.

As I understand it, the survey of the Ontario public service is done at point of entry. In other words, when a person is being employed, they fill out a self-identification questionnaire with regard to their gender, racial origin, whether or not the person has a disability, and aboriginal status.

For persons in our office, we have persons who are unclassified, who are temporary, which means that the information that has so far been captured by the employment equity branch and the OPS is partial, is not complete information. The information is not always current because our organization is a startup organization with a majority of temporary workers. There is a larger turnover in that situation.

When the information is presented, the information that can be disclosed—we do have to respect confidentiality. This is particularly sensitive in a small organization. In a larger organization, confidentiality isn't such an issue because there are large numbers of people and people cannot necessarily be directly identified. In our organization, because of the smaller numbers, it is a greater issue and it's very important for us to manage the respect and dignity of each individual.

It's necessary to make those comments to you because we do need to manage the employment equity program with regard to our employees, and we have to manage all aspects of it, including the confidentiality.

I am quite confident that the information that is maintained by the employment equity management and the employment equity service will demonstrate that we have been following the principles of employment equity. Given that the information is partial because, as I said, of the turnover, because our organization was not surveyed in 1991—

Mr Curling: Yes. Tell me—

Ms Westmoreland-Traoré: —when the last survey took place—

The Vice-Chair (Mr Allen K. McLean): Your last question.

Mr Curling: I wasn't trying to be rude. I know the Chairman is going to cut me off very soon and I want to get this question in. Help me through this process. Am I asking the right type of questions in the sense when I ask about the breakdown in your Employment Equity Commission—because that's the kind of questions I think people will be asking—to give me the gender breakdown and whether there are disabled individuals within the organization? Are those the right questions I'm asking?

Ms Westmoreland-Traoré: When the commission is set up, the commissioner will be responsible for managing the employment equity legislation. The employment equity legislation and the regulations will be quite directive on the conditions for the workforce survey, the conditions for reporting, the conditions for monitoring the reporting. At this point, that is my principal concentration.

The process that you are asking me about now is a process which is internal to the government of Ontario and it's a process that is to some extent voluntary, because it's not based on legislation. This process is

being managed by our office, but I don't think you can look to this process and then project and say this is the same process that will be used under the employment equity legislation.

Under the employment equity legislation, we will be clearly following the rules for when the workforce survey is to be done, how it's to be done, how it's to be updated, what is adequate in terms of the existing workforce survey and the workforce survey to be obtained according to the regulation.

All that being said, I'm pleased to tell the members of this committee that we have been following the employment equity principles as they are set out in the legislation with regard to hiring and hiring practices and seeking representivity of the designated groups.

1030

Ms Carter: Welcome to the committee once again. It does seem unfair to be putting you through this when you haven't even started doing what in fact you are going to do, so it's all a little up in the air, shall we say.

How do you see employment equity, when we are enforcing it, impacting on the workload of the Human Rights Commission? It's my impression that yours is a systemic approach and that any individual cases that arise from that would go to the Human Rights Commission anyway. Do you see the systemic framework that will come into force with employment equity as significantly reducing the case load of individual complaints that the Human Rights Commission has to deal with?

Ms Westmoreland-Traoré: I believe that when the employment equity legislation is operative, and when the practices and policies are being reviewed in the companies and barriers are being removed, there will be a positive effect on the workplace. That is the whole objective and the commission will be there to provide information and support so that this can be done in an expeditious way.

Normally speaking, when this is being done, and when it's being done with the knowledge of the employees and with the participation of the unions, we would expect that there would be fewer complaints of systemic discrimination. That's the reason we're taking a proactive approach, somewhat similar to the pay equity legislation. We would think that by the operation there would be a reduction in the nature of systemic discrimination.

This bill does not say that individuals cannot go to the Human Rights Commission to complain, but we are expecting and hoping that because of the work of the Employment Equity Commission there will be better support in the workplace, there will be anti-harassment processes and there will be measures, training measures, career development measures and so forth, to remove systemic barriers, therefore removing the need, we would hope, for a good number of complaints.

Ms Carter: Of course there could be some complaints based on the working of employment equity, but I understand that a person cannot win a case on the basis of being discriminated against because of employment equity being in place. Is that the case?

Ms Westmoreland-Traoré: I know this is a subject

that was greatly debated in this committee and I believe that you are right. The present legislation states that a person cannot make a complaint because positive measures or numerical goals are designed to assist the four designated groups. I think that is the limit of the protection and that protection was so defined so as to protect the essentials of the Employment Equity Act without going beyond what was necessary.

Ms Carter: I don't know whether it's fair to ask you this, but after all, this committee is discussing the Human Rights Commission. Do you think that the measures that have been undertaken in that commission to reduce the backlog and improve the functioning are going to be effective, the inside-out measures, as the commissioner describes them?

Ms Westmoreland-Traoré: Ms Carter, I do not have the answer to that question, to tell you honestly, because as commissioner for employment equity I can't really be involved in the workings of the Ontario Human Rights Commission. It's not my role. I wouldn't want to mislead this committee with information to which I'm really not a party.

Ms Carter: I won't press that. I just wondered if you had an opinion.

Ms Westmoreland-Traoré: I would like to, but it's not worth very much.

Ms Carter: We all have to function back in our constituencies. Public opinion expresses itself, obviously, as it should, and we get letters to the press and calls to our offices and so on. The biggest obstacle to acceptance of employment equity is people who say, and it was said in committee and it's being said everywhere, that employment on merit will be discarded. I'd just like to have, in your words, your answer to that accusation.

Ms Westmoreland-Traoré: I think that this is a tenacious question and it keeps coming back. We understand, working on this legislation, that employment equity is meant to remove the barriers. What has been the experience of many groups is that despite their qualifications, they're not being hired, they're not being promoted. Employment equity is meant to see that in a non-biased way, in an objective way, people's skills, qualifications, abilities will be assessed and they will be able to compete fairly.

It also means that the employers will be able to look at a broader pool of candidates, having removed these barriers. To me it is not a reality to say that employment equity removes the need to look at qualifications and to hire qualified people; it is really not correct.

Ms Carter: Of course nobody's forced to hire or not hire a particular person in a particular situation; it's just over time and in the long run that this will operate.

Ms Westmoreland-Traoré: That's right.

Mr Curling: That's why we say put that in the legislation.

Ms Carter: I understand that some firms which have been practising employment equity voluntarily have found that this has positive effects on the quality of their workforce. I wonder if you could enlarge on that.

Ms Westmoreland-Traoré: I think that it was very pleasing for us, but not unexpected, that one of the vice-presidents of the Royal Bank made a very strong statement supporting employment equity and saying that it's about managing resources well, about reaching new markets and that it was definitely a benefit to their company. We have a similar statement from Manulife, and I am aware of a statement also from one of the senior managers at Bell Canada who said employment equity meant that they were better in tune with their employees. This is something I also found to be a fine way of expressing the benefits of employment equity.

You know that in other jurisdictions senior managers now have said that regardless of the legislation, they would continue to use the principles and the practices, including numerical goals and timetables, of employment equity because it allowed them to have a diversified workplace, and managing diversity has become one of the hallmarks of good management, as well as putting in place supportive and qualitative measures.

Ms Carter: It is the case, I believe, that as the century draws to its end, a majority of people coming into the workforce are going to be in the designated groups. Obviously you start with 50% women and you go on from there, but I believe the figure is going to be something like 85%.

Ms Westmoreland-Traoré: Yes. We have tried to disseminate this information as well. In one of our last bulletins we talked about the demographic changes and how they underscore the need for employment equity, and what you're saying about women obviously is central to this whole initiative. Women now make up 45% of the total labour force compared to 35% in 1971. In 1991 almost 64% of women with children under six years of age participated in the labour force. This is very significant because we have this mindset that women are in the home or women with young children will leave the workplace and be at home, when it is becoming very quickly the reverse.

With regard to people of aboriginal status, in 1991 the census revealed a 41% increase in the aboriginal population compared to 1986. I know there are different explanations, but there is a significant increase, and with people with disabilities as well; not only is the proportion of people with disabilities increasing, and in the 1991 census it went up from 13.2% to 15.5%, but it is also that people with disabilities are more active in the workplace and are claiming their right to non-discrimination and to be fully integrated in the workplace.

Ms Carter: Do you think there'll be any problem with defining "disability," where to draw the line?

1040

Ms Westmoreland-Traoré: There is a considerable body of expertise at this point and I must say that this comes both from the professionals, the statisticians, but also the consumer groups themselves and they've made very helpful recommendations to us. We've had a working group working since last May on defining "disability" and also "severe disadvantage because of disability," and with our federal colleagues and they have been managing employment equity statistics since 1986

at least, under the legislative process, the legislative program. There are definitions that can now be used.

We also are aware that under the legislation regulation, it will be a question of self-identification. Once the definition is out there, the person then will feel free to say, "Yes, I am," or, "I am not."

Ms Carter: Which seems a very fair way of doing it.

It was suggested to us when a different committee was having hearings on employment equity, that job description now becomes a very important factor, that a lot of assumptions that have been made in the past about what qualifications were needed for a certain job were probably not realistic, maybe high qualifications, that kind of thing. Do you feel there is now an extra need for employers to be very precise about how they define what is needed for a particular job?

Ms Westmoreland-Traoré: Some employers they have already begun this work, defining what are the essential components of an employment. They've done it for the purposes of pay equity. So when we come now with employment equity, we can see the interrelationship. Employment equity will say, "Now that you've defined those essential functions, are the criteria that you are asking the criteria necessary to perform those functions?"

Height and weight criteria were one of those arbitrary barriers, and most of the police services at present across the country have replaced them with what the specific skills are: agility, strength, judgement, responsibility and so forth.

There's still a lot of work to be done, but that work again will be done in the workplace, jointly with unions or in collaboration with employees and with support from the commission.

Ms Carter: There has been concern about how advocacy groups could be involved with the commission and its work. Could you tell us a little about what you perceive the role of community organizations to be in the functioning of the Employment Equity Commission?

Ms Westmoreland-Traoré: I welcome that question because I believe that a commission, to be relevant, needs to have good communication and participation from all stakeholder groups. In that in employment equity we are striving to achieve better and equitable employment opportunities for designated group members, who by definition have been marginalized and disadvantaged, we will have to be especially attentive to ensure that associations from the designated groups are an active part of our process.

What we have done to date is set up a series of advisory committees at each step of our process, whether it was the consultation, public education, development of regulations. At different times, we have formed advisory groups which include representation from major stakeholders, from organized labour, manufacturing associations, chambers of commerce, small business organizations and the four designated groups.

Besides the work in the committees, we have also had a joint initiatives program which has allowed us to give some tangible support for the participation of the non-profit organizations in the work of our organization.

We have had and we have ongoing joint initiatives with the Alliance for Employment Equity; Skills for Change, which is a women's organization; the Organization of Black Tradesmen and Tradeswomen of Ontario; and the Women's Coalition for Employment Equity. We have with some specific organizations, such as the Filipino business association and the Korean Canadian Women's Association. We have with the United Food and Commercial Workers, International Ladies' Garment Workers' Union and so forth. We have had in the past as well with the women's professional associations, CAWEE, the Canadian Association of Women Executives.

In the approach to joint initiatives we've had input not only, I would say, from these representative organizations but from their networks across the province, and these include organizations such as Persons United for Self-Help and Disabled People for Employment Equity, and they've made very concrete reports, including materials, videos, posters and documents which are of assistance.

One of the objectives of the joint initiative program, besides the education and awareness raising, is also to help foster linkages between stakeholders so that some of these initiatives are joint between employer groups and persons with different designated group status.

Ms Carter: This is specific outreach, but then there's the question of broader public education. In our discussions of the Human Rights Commission, there have been queries of the fact that the educational functions seemed to be damped down at one point, although I believe that is being reactivated now. What role will public education, as such, play in the Employment Equity Commission and what are you doing about that?

Ms Westmoreland-Traoré: Public education is one of our specific mandates under Bill 79, "To educate the public about employment equity." This is paragraph 41(1)6.

We've also received a very direct mandate from the government to engage in public education, as well as setting up the commission. Even before legislation we're working on the public education strategy. At present, we are doing general public education through our speaking and participation in many conferences, professional community conferences. We're working with the community college network to develop specialized courses in employment equity within the community college system.

We also are at present through the joint initiatives, which I've mentioned, but in particular we're working with trainers from the different organizations, including companies, and these trainers, during the workshops they participate in, have a chance to be familiar with materials that have been developed specifically for teaching employment equity and have the chance of exchanging with other trainers so that they can form support networks.

Now so far 400 of these trainers have participated in our workshops and they then go out in the different areas. We've been to 15 cities. I believe I have a summary which I can leave with the committee. They go into their different workplaces, unions and community organiz-

ations to reverberate what has been received from the office.

Ms Carter: Thank you very much. Those are all the questions that I have.

Ms Westmoreland-Traoré: You're welcome.

Mr Allan K. McLean (Simcoe East): Good morning. Welcome back.

Ms Westmoreland-Traoré: Good morning. Thank you.

Mr McLean: The construction industry in Ontario has an exemption, doesn't it?

Ms Westmoreland-Traoré: The construction industry can have a specific regulation—it is provided for in our bill—because there are, as you have mentioned, special features to the construction industry: the seasonal nature, the small size of the majority of construction companies, the high rate of turnover, the specialization, the union hall process for employment. All of these special features mean that it is appropriate to have special requirements in the construction sector, and this is being developed. Possibly you're referring to that.

Mr McLean: Right. The nature of Ontario's agricultural industry leads to pronounced seasonality in employment patterns. This seasonality, combined with clause 3(4)(b) of the act, means the small employer exemption, subsection 6(3), doesn't work for many farm employers.

Ontario has recognized the uniqueness of the farm workers in several instances, including the Employment Standards Act, the Occupational Health and Safety Act, and most recently the Agricultural Labour Relations Act, 1993. The Ontario federation has written to the minister, asking that Bill 79 similarly recognize the particular character of the farm workplace and farm employment.

The minister recently has committed to exploring regulatory measures to address agriculture's concerns. Are you going to make them an exemption as well, as we have done with the construction industry?

Ms Westmoreland-Traoré: I think the authority resides with the Lieutenant Governor in Council, meaning the cabinet. I believe that the Ministry of Citizenship presently is in the process of developing regulations specifically for seasonal workers, and it may be that agricultural workers are a specific set of seasonal workers. I understand this concern is being addressed, but I don't believe that it will be, if you wish, the responsibility of the commission. We will then manage whatever regulation is set forth by the government.

Mr McLean: Was it the government that changed the regulation for the construction industry?

Ms Westmoreland-Traoré: The government is preparing a regulation specifically for the construction industry and I understand that it is now in the process of preparing a regulation specifically for seasonal workers. It may be that there is also a specific regulation for agricultural workers.

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Mrs Elizabeth Witmer (Waterloo North): I may repeat some of the questions. Unfortunately, this winter and driving from Waterloo have not been very good.

There was black ice on the road and there was a nine-car pile-up on a bridge today, so it's really not been good. I apologize if I repeat questions that have already been asked.

Ms Westmoreland-Traoré: I'm glad that you're here safe.

Mrs Witmer: I am too. Once I got going—I did drive.

Anyway, I would hope that you would support the issue that's just been raised by Mr McLean. I know the agricultural community is quite concerned about the possible impact of this legislation because of the number of seasonal workers that various farmers hire throughout the course of a year, simply because they often can't find people within the province of Ontario who are able to carry through and do the work that's needed.

I think we went through this before, but I'd like to hear more of a response. The Employment Equity Act as it is and as it was during the deliberations was a cause of concern, particularly a concern that was expressed time and time again by the employer community because of the potential overlap between the Ontario Human Rights Commission and the Employment Equity Commission. Do you share this concern that is being expressed and has been expressed, and would you indicate to us why that will not be the case?

Ms Westmoreland-Traoré: I think employment equity has been a long time in coming. I think the experience of persons in the designated groups has been that they require a specific remedy and they look forward to the establishment of the Employment Equity Commission with a mandate in order to address these questions in a systemic and proactive way.

I believe that while we share common objectives, the Human Rights Commission and the Employment Equity Commission, we will be able to work in such a way that we do not produce overlap. I think there's significant and sufficient work for both of those commissions to do. Our commission will focus exclusively on employment, will focus exclusively on systemic. We will not be concerned with complaints from individuals, and we will work also with a mandate to provide assistance to all stakeholders in order to participate in this process and have effective employment equity.

Mrs Witmer: When you say you will not be responding to complainants, what exactly is it that you mean?

Ms Westmoreland-Traoré: Under the Ontario Human Rights Code, the person or association that alleges discrimination would approach the commission and file a complaint. The commission has the responsibility of processing that complaint—I know the commission has outlined the different steps that it uses—and further to refer, depending on its decision, that file to a board of inquiry.

Under the Employment Equity Act, an individual who feels they are the subject of discrimination would still go to the Ontario Human Rights Commission. Our work is to see whether or not the legislation is being respected, which means, has the initial information and education been done in the workplace? Has the workforce survey

been completed? Has the employment systems review taken place? Is the plan developed in compliance with the legislation? Are the certificates filed? Is progress being made towards achieving employment equity?

Those are the types of questions that we will be asking, and those are the type of questions that our officers will be looking at in audit situation. The Ontario Human Rights Commission does not have the function to audit. So our work is different. We will not be investigating individual complaints. We will be looking to see whether the different activities, as they are foreseen here, are being completed.

Mrs Witmer: I appreciate what you said. How then will complaints arrive at the tribunal?

Ms Westmoreland-Traoré: An individual can complain to the tribunal. I hope that I can perhaps dispel some misunderstanding. I'm not here speaking on behalf of the Employment Equity Tribunal; I'm speaking on behalf of the commission. I'm saying that in the first instance, the commission will not be receiving complaints. An individual may go to tribunal on, I believe, two specific grounds. One is that the employer is not following its plan; or two, the employer is not achieving results.

The individual or association will not be going to tribunal, as I see it, because the education, the certificate, the plan, does not conform. All of that activity will not be subject to an individual complaint. It will be the responsibility of the commission to see if that is being done. I don't know if you want me to continue with this. It's the responsibility of the commission to see if that is being done.

If the commission is of the opinion, through an audit, because of its audit activity, that one of these requirements under the bill is not being completed, then the officer of the commission will attempt in the first place to achieve a settlement, because the idea is to have support and progress towards employment equity. That is what is the first objective. That work will take place between the officer and the workplace.

If there are disagreements between the parties, because this is a joint process, the parties can go towards the Employment Equity Tribunal for resolution. Following the first effort at conciliation, if the employer does not agree, then it would go to commission. The commission would decide whether or not an order was appropriate. The workplace, if it is not in agreement with that order, would then go tribunal. So that is the scheme, as we see it, in the employment equity bill.

Mrs Witmer: Are you suggesting, then, that the only cases that would go to the tribunal from the commission would be, probably, the employer?

Ms Westmoreland-Traoré: Unions could go too if there were disagreements.

Mrs Witmer: What about individuals?

Ms Westmoreland-Traoré: Individuals can go to tribunal on those two grounds, one ground being non-compliance.

Mrs Witmer: But they wouldn't have come through the commission.

Ms Westmoreland-Traoré: No, they wouldn't come through the commission.

Mrs Witmer: It is possible, then, that if an individual felt that inappropriate behaviour had taken place, they could apply both to the tribunal and the Ontario Human Rights Commission and simultaneously you could have two bodies responding to their complaint?

Ms Westmoreland-Traoré: The nature of the complaint, I believe, is different. The Employment Equity Tribunal will look to see if the planning process is unfolding as it should, which is not the individual's situation. I may feel the subject of discrimination, either intentional or systemic. Many people don't formulate their complaints in that way. But the work of the commission tribunal will be focused on the systemic. As I said, in the overall, it is primarily a proactive type of role, as opposed to responding to complaints.

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Mrs Witmer: Yet there is the legitimate concern that an individual could go to both bodies and ask for some assistance. I'm just a little concerned, because we've seen the Ontario Human Rights Commission expand its mandate and seem to get involved in things that originally might not have been within its jurisdiction. How will we know? What guarantees, what mechanisms will be in place to make sure that you don't have two bodies trying to track down a complaint that's been put forward, which would take a lot of time and effort on both parts?

Ms Westmoreland-Traoré: I cannot tell you how the Ontario Human Rights Commission will manage complaints dealing with systemic discrimination in employment. I know that the Employment Equity Commission will have to decide in the cases as they appear before them. I know, however, that one of the concerns that was raised by community groups, consumer groups, equity-seeking groups was that they were very insistent that protection under the Human Rights Code should not be limited by the Employment Equity Act. I think that is one of the objectives this bill has attempted through amendment to conserve and maintain.

Mrs Witmer: After I have heard your explanation as to how the commission will function and its role, how the tribunal will function and its role, and then we know what the role of the Ontario Human Rights Commission is as well, I guess I still believe and support some of the individuals who appeared before us who suggested that responsibility for discriminatory complaints which are going to go to the tribunal should be transferred to the Ontario Human Rights Commission. In many ways, I do see a duplication of effort. I know I asked you this question the other day, but do you still see the need for a separate tribunal? I'm not convinced that it's absolutely necessary and I see it as a duplication of effort.

Ms Westmoreland-Traoré: Just with regard to the complaints, I hope I'm not repeating myself, but what the Employment Equity Commission will be looking for and what the Ontario Human Rights Commission will be looking for are not necessarily the same.

The Employment Equity Commission will be looking to see, "Is this employment equity plan in place and is it

in compliance with the legislation and is it being achieved?" as opposed to looking to see in an individual circumstance whether or not this person's rights have been violated. The object of the two is very different.

Mrs Witmer: I understand that.

Ms Westmoreland-Traoré: That's right. The functioning and the purpose is very different between the two.

Mrs Witmer: That's right. I can understand then the role of the commission, but what I can't understand and where I see the duplication of effort is in the role of the tribunal. If you are going to have a discriminatory complaint, you could transfer that to the Ontario Human Rights Commission, because in many ways the tribunal is going to be a duplication of effort. I'm wondering why that mechanism wasn't put in place. I understand your role and the role of the commission, but I do see some duplication in the other area.

Ms Westmoreland-Traoré: I believe there is some effort being made at the level of the tribunal to, in the first instance, unify the administrative processes, to collocate, to use resources jointly in certain instances, to integrate the information technology and what not. That concern, I believe, is shared and there is some pragmatic operational work being done to achieve good, cost-effective use of resources.

Mrs Witmer: I'm glad to hear that. I have one more question. The definitions for disabled persons are different in the Employment Equity Act and the Ontario Human Rights Code. Why are they different?

Ms Westmoreland-Traoré: The definition of "person with disability" under the employment equity bill I believe is the result of policy work, the result of consultation, the result as well of the experience of our federal counterparts under the employment equity legislation, so that definition is put forth because we understand it to be practicable, workable and to respond to the needs as they've been expressed for the purposes of planning and having people self-identify in the workplace.

The Ontario Human Rights Code is a code which is put in place to provide equal treatment and to provide protection against discrimination on the grounds of disability, and the definition has evolved over the years. I believe the definition for the purposes of the Ontario Human Rights Code and remedying individual and systemic cases as they are presented is the result of that historic judicial process.

Mrs Witmer: I wonder if there are going to be some differences in the implementation of the laws if you have different definitions within the two pieces of legislation.

Ms Westmoreland-Traoré: When the commission is set up, I know there will need to be discussion because this is a common concern and the operations of the Employment Equity Commission need to be reasonable and be seen to be reasonable. I believe this will be an area for further discussion between the commissions.

Mrs Witmer: Thank you very much for coming back. I very much appreciate that and I wish you well in your endeavours.

Ms Westmoreland-Traoré: Thank you very much, Mrs Witmer.

Mr McLean: This process has been enlightening to a lot of us. When we look at some of the statistics that were given to us yesterday, such as 116,000 inquiries or letters to the Human Rights Commission, that's almost 10,000 a week, well over 1,500 every working day. There's got to be some concern with regard to who evaluates those individual inquiries or letters or phone calls. I'm curious to know your observation on it. The Human Rights Commission certainly has a job cut out for it. How do people decipher which ones they think are legitimate and which ones may not be? What's your observation on that?

Ms Westmoreland-Traoré: It is quite daunting, as you have said. I think that people's understanding of their human rights and their protection against discrimination has grown and deepened and that there are different grounds now for discrimination that have evolved and are now protected by our legislation. I think what is going to happen over time, hopefully, is that there will be a culture in which people will react in their own self-interest and say, "Yes, protecting equity is an important function because it goes to the quality of all of our lives, and therefore the need for a very active and very important structure, in order to protect these values and rights, will always be present but perhaps there will not have to have such an overwhelming number of inquiries."

I guess to some extent some of these inquiries, and it depends on the information you're using, are inquiries for information and others are complaints, but I have a sense that as we talk of smoking, as we talk of use of alcohol, as we talk of the environment, there are going to be changes in our culture and in our attitudes. I think this is coming about to some extent.

Mr McLean: Don't you think we have brought a lot of this on by ourselves? I wanted to give you an instance just yesterday in my constituency office, where my receptionist returned a call and the individual said to the receptionist, "You have raised your voice to me." That could be a case, for the individual, of discrimination, couldn't it?

Ms Westmoreland-Traoré: I want to respect your question. I know that the Ontario Human Rights Commission has intake officers who are trained and that they do have different processes to follow. I want to respect your question and say that it is indeed a question for management and training. I understand that all cannot be dealt with at the individual level that you're bringing about. I believe that some of the expectations of persons for the protection of their rights will come about because of the systemic action that we will be doing at our commission and the public education, which will lead people to have a better understanding of what their rights are and how they are to be protected.

The Chair: Thank you very much for your appearance this morning, Ms Westmoreland-Traoré.

Ms Westmoreland-Traoré: It was a pleasure, Mrs Marland, and good luck in the rest of your deliberations.

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DRAFT REPORT

The Chair: The rest of this morning we will devote

to the drafting of the report on the Ontario Human Rights Commission. Would you like to make some comments, Mr Pond?

Mr David Pond: No, that's fine.

The Chair: All right. Mr Pond is going to wait for the direction of the committee members. Shall we just have it as an open-floor discussion?

Mr Curling: I think that would be appropriate because one of the things that we were depending on—I want to recognize the fact that the Hansard people are so overwhelmed with work—

The Chair: We do have a choice, I think. We have a choice of whether or not we do the drafting on the record.

Mr Marchese: I don't mind.

The Chair: It's up to the committee whether you want to do it on the record or have Hansard finish with Ms Westmoreland's presentation, and then go into the drafting.

Mr McLean: I think it can be very brief. I see nothing wrong with it being on the record. From my point of view, I would like to see what David Pond has assembled, what he feels some of the ideas are that have come across. I want to be very brief as far as I'm concerned. One of the major concerns I have is the very issue that I just raised at the last. Are these 116,000 calls or inquiries—people are desperate out there and they'll do anything. I think there's got to be clarification of how these inquiries are handled and how they should be handled. It's a great concern.

Mr James J. Bradley (St Catharines): In general, and it's not as helpful as it might be, it seems to me what we're endeavouring to do is to bring forward a report which will make recommendations which will make the Ontario Human Rights Commission an effective body. There were several presentations made that had suggestions in them, some of them that I thought were extremely good suggestions; we had some responses from people.

It seemed to me what emerged from this—I don't know if there's a consensus; the government members haven't spoken yet and perhaps they feel a consensus in this; maybe they don't—was the goal being that the commission deal with legitimate, genuine cases in an expeditious and effective way, and that's very much overall. I can elaborate later on but that's overall, it seems to me, what we were looking for in the commission, that it be effective, that it deal with genuine and legitimate cases in an expeditious manner.

Concerns, it seemed to me, were expressed about frivolous complaints coming forward which caused great agony for those who have been accused and caused great difficulty for the commission, because it has to spend a lot of time on these kinds of complaints, at least to this point in time. One of the presenters to the committee indicated that it was certainly his opinion that the gatekeeping function was one which hadn't been carried out as well as it might have, and that with appropriate gatekeeping, that is, the screening of these to determine whether or not they are—I understand it's not easy—legitimate would go a long way to improving the per-

formance of the commission. It seems to me we're in a context today of simply not being able to add huge numbers of staff and a lot of financial resources.

Every government, I guess, when it has a problem of this kind, that feels those resources would be helpful, that would have been the way it would have been approached in good economic times. We're not in good economic times and it seems to me now we have to look at how we can make it more efficient.

I think that overall the thrust is to make it a more effective, fairminded commission as opposed to being a bit out at sea at the present time, not necessarily because they want to be in that position but because there hasn't been effective gatekeeping and it just hasn't operated as efficiently as many people would like it to.

That's a general comment to start and I guess we could comment further in some detail. I don't know how the government members feel on that, or the other members.

Mrs Witmer: After listening to the presentations that have been made by all parties, it's become obvious that the concern that dominated prior to this discussion is still there, and that is that concerns are not being dealt with in a timely manner and also that inappropriate cases are appearing before the commission.

I would agree. I think Mr Bradley has expressed well the direction that we need to focus our attention on, and that is to ensure that with the limited resources we have, both financial and human—I think we need to emphasize the fact that they will not be increased; in fact, if anything, we need to decrease those resources and use them more efficiently. Somehow we need to ensure that only those cases which meet certain criteria should be taken on as a responsibility by the commission.

I feel that right now there are cases sitting there that should never have arrived in the lap of the commission, so we do need more effective gatekeeping, if that's how we wish to refer to it. We need a more appropriate screening process and then we need to make sure that once a case has been accepted, it's dealt with in a timely and expeditious manner. That simply hasn't been happening, and we need to make sure. There were some presentations that gave some excellent suggestions as to how the issue could be facilitated and dealt with in a more timely manner.

Mr Marchese: I agree in general with what the other members have said. In the drafting of the report, I personally, and the others should speak for themselves, say that we should comment on what the Human Rights Commission has done because I personally believe that these efforts are positive, that the internal organizational changes it has described, in my view, are very good, positive, useful things as an important beginning to deal with many of the other problems.

Many of the presenters here felt that as much as they were good, much more needs to be done to be able to deal with the ongoing problems that the other members have identified and that the presenters keep on identifying in presenting claimants.

Clearly what we need to do, what David Pond has to do as well, is to bring many of the suggestions that

individuals have made that build on the internal organizational changes that have been suggested as a way of getting to the problem. We need to identify them so that when we come back we can comment on those specific suggestions again.

I personally want to recommend that the minister proceed to establish a mechanism and a time frame for implementing the recommendations of the Cornish report. I would like to see that and I would like to see a response from the ministry, with respect to that, how it would deal with that recommendation. I don't know what the other members of this committee want to say to that.

As they move towards those recommendations, I also that there are other interim measures that need to be taken as well. That may mean amendments, obviously, in the meantime to allow complaints to be referred directly to a hearing without a protracted investigation by the commission. Where a particular investigation is not required or where a complainant is able to proceed with the assistance of advocacy organizations—we've seen many advocacy organizations here in the last few days that said, "We're ready; we are helping them and we're ready to represent them,"—they should be moving to a hearing without having the commission have carriage of the complaint throughout the whole process, which is what I think Mr Bradley was talking about, that gatekeeping role. I think it's part of this problem.

These are useful interim things that we need to look at that I think will help the commission deal with some of these protracted cases that need to be dealt with much more expeditiously. The present system simply doesn't allow for that in spite of the organizational changes they've spoken to. You will still have cases that will drag on for a long time. We need to look at ways of reducing that time frame so that it doesn't become injurious or deleterious to the individual complainants. So we need to look at that.

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I think we should look at changes that say that where the commission chooses to relinquish carriage of the complaint to the complainant, or where the commission is unable or unwilling to carry forward the case on a timely basis, as set out in section 38, the board will give carriage to the complainant. We should be looking at measures like that as a way of dealing with those cases that we all recognize are simply dragging on too long. These are my suggestions and I'm looking forward to hearing others as well speak to this.

Mr McLean: We're all saying the same thing.

Mr Curling: Actually, I agree with Mr Marchese in the respect that he outlined and the direction we should give in the writing of the report. I will emphasize, however, that the review of the code and amendments to the code is something that should be acted upon, because it has been mused about that this is happening but we're not quite sure when. The direction should be that people are concerned the amendment should come forth and be acted upon.

There was a strain through the hearings that stated very much so that all human rights, all individuals, should be

protected. Yes, there are designated groups which are more disadvantaged than the others, but that balance itself, that we don't put other people at a disadvantage, that people's rights overall should be protected, is raised from time to time here through the Fair Rental Policy people, through other areas, ones who feel that they've been discriminated against, how jobs have been advertised, the feeling that people's rights are being denied when they are shut out, and eliminating barriers but also that while eliminating barriers, other walls are not set up for people to participate so their human rights are not being discriminated against.

On the Cornish report, I fully agree with Mr Marchese that all these reports that are out there, especially the Cornish report, should be responded to by the minister, because it seems to me that the Human Rights Commission has taken some of those recommendations and is implementing them, but formally it would be helpful to know where the minister of the government stands with that report.

The Employment Equity Commission plays a very important role in human rights. They also should start making some decisions on that. Comments were made that it is still hanging in abeyance or when that should happen. I think the report should reflect that people are anxious about that, in having that on stream.

It was very clear that people were saying that there should be more emphasis on the systemic unit approach to eliminating discrimination, without reducing—let me make it plain they all stated that—the individual complaints area, because that is important, but the expansion of and more emphasis on systemic discrimination.

The last point I'm going to make, and I want you to hear this pretty clearly, as Mr Bradley stated, is that it is not a reduction of resources but to use the resources within the Human Rights Commission and the Employment Equity Commission more efficiently. It was very clear that the employment equity people stated they didn't have enough resources. I think it is quite possible to look at whether they're using those resources effectively and whether the Human Rights Commission is using those resources effectively.

It is quite possible that we may need more resources, but the fact is that we should be very careful that the report reflects that we are saying we must reduce those resources but also use those resources more effectively. Those are the directions that we will be taking, and we hope the report reflects those comments.

Ms Carter: I think we heard the word "evolution" a lot when we were listening to the minister and the commissioner; that in fact changes are taking place but that they are, as we were told, from the inside out, not drastic restructuring. Probably we should recommend that this process continue and that we see what the outcome of it is. There might be a time in the future to decide whether this process has been adequate or whether more drastic solutions, as may be suggested in the Cornish report, are going to be necessary.

Having said that, and I agree with what people have said before, there still maybe is a problem dealing with case load and maybe more attention needs to be paid to

the process of dealing with complaints and whether more changes could be made to that.

There is a question as to whether some of the groups, such as the Centre for Equality Rights in Accommodation and the Advocacy Resource Centre for the Handicapped, and so on, which presented, should have more access to the commission because they seem to have a lot to offer as to whether they could be somehow better integrated. We also saw a concern with public education, that perhaps not enough was being done in that direction, and again we heard that initiatives are being made but I think we need to make sure that those are sufficient and that this avenue is sufficiently explored. For example, could community organizations assist in achieving that end of public education?

Other people have suggested there needs to be a more systemic approach to some of the problems the commission deals with, particularly racism, and maybe that should be pursued further.

We heard a lot of comments on whether there is a bias on one side or the other, the complainant or the respondent. What the commissioner said, that we're getting the complaints from both ends and therefore maybe neither of them were founded, is quite possibly true, but I think this issue needs to be addressed in the report.

Of course, there is the need for the commission to work in with employment equity and for the two to mesh properly, which connects up with the issue of how closely the human rights board of inquiry, the Pay Equity Hearings Tribunal and the Employment Equity Tribunal should work together. We've been told that there is an evolution taking place in that respect, that they are pooling amenities and working together. I think that's something where we can see how that evolves and maybe in the future a judgement could be made whether that was sufficient or whether more needed to be done.

Mr Marchese: Just as a quick point, as well, in matters of accountability we might want to look at that. We might look at mechanisms as to what extent we can make the whole process accountable to everyone, which would be to respondents, which would be to complainants and to the general public, and presumably ourselves as part of it, although we directly have responsibility to them, so presumably they're accountable, but we should look at mechanisms for greater accountability with what's happening with the commission.

Mr Curling: I fully agree with that, because that was raised from time to time, whether the Ontario Human Rights Commission should be reporting to the minister or to a legislative committee. That was raised and that should be reflected too with regard to accountability, as Mr Marchese said.

The Chair: Any final directions to Mr Pond? Do you have any questions, Mr Pond?

Mr Pond: Mr Cousens asked me to mention that he couldn't be here today, but he wanted to have some input into the final report.

Mr Marchese: We can't accept it.

Mr Pond: I just thought I'd put that on record.

Mr McLean: Forward it in writing.

Mr Bradley: In regard to the report writing, if we're still on that issue, I would like to see certain issues dealt with and then the committee, when it looks at Mr Pond's work, will decide what wording it wants, I suppose. There were some issues that were raised that I think should be reflected in the report. In talking about the number of cases that the commission deals with, one of the people who put forward an idea was Mr Juriansz. He said that one of the problems with the commission was that it kept enlarging its mandate and that it wouldn't deal with issues that were clearly within its mandate, and that by taking on new roles and responsibilities—and heaven knows that happens with so many commissions and governments and everybody—that was one of the problems. I think we should examine whether in fact they have been enlarging.

1130

He mentioned that. I don't want to go through his brief word by word, but he made some interesting points in his brief about that. I'll quote briefly from it: "The commission seems to believe that one of its main roles is to constantly strive to enlarge its jurisdiction. The commission's expansive view of its jurisdiction makes a backlog inevitable."

He said, "The commission imposed virtually no limits on the type of medical conditions which could constitute handicap and a great many of these complaints related to minor illnesses and ailments." What he talked about there was in dealing with disabilities.

He suggested that the commission was willing to look at virtually anything and that therefore the time it could spend on looking at really legitimate disabilities was limited. I know that's a matter of discretion, and that's a real problem, but I think Mr Pond may want to come forward with at least some suggestions in that regard and then we can either reject them or accept them.

He also dealt with the issue of fairness on page 6 of his brief. Remember that Commissioner Brown said she didn't feel the commission was at all biased, that because she had received complaints from both sides, in fact that means it must be operating well. I don't come to those same conclusions. That's one conclusion we like to come to, but I don't always come to those conclusions, because if we get down to the resources available to complainants and the resources available to, I call them defendants—

The Chair: Respondents.

Mr Bradley: "Respondents" is the appropriate word—at the final stage. We're not talking about the early stages. I think she's correct in saying—it would be hard to challenge her contention, at least—that in the early stages the commission tries to be fair and that it's a level playing field. But Mr Juriansz says: "Complainants, regardless of their financial status, are in effect represented free by the commission. There can never be costs against a complainant, and costs against the commission are difficult to obtain and are rare. This scheme has negative effects."

He goes on to say, "The fact that the commission becomes the ally and representative of complainants at the ultimate stage permeates the commission's entire

process and demeanour." That's only one person's opinion. I don't wish to say that because he says it, it is necessarily so, but I thought he had quite a balanced presentation. I would like to see us address that problem because it means that some people, rather than go through a long process, may simply pay off the complainant. I would call it hush money. It's a strong word, but I call that hush money. So that's a problem that I think has to be looked at carefully.

Remember, as I tried to say yesterday, it's not always a huge corporation we're dealing with. It could in theory be any member of this committee who could be in that position and might be forced to defend himself or herself in a proceeding, at some cost. It may be that the government pays that cost, I don't know, but those are situations.

We always think it's the big boss at the top, and often it's someone in the middle echelon who has been accused of that. I well recall—just a very brief anecdote for the Chair—that I had cousin who was accused, in a position he had many years ago, of discriminating against native Canadians, and his final comment to those who were having the hearing was, "By the way, my wife is a native Canadian." It kind of threw away the case. Those are the kinds of things. He had to place himself in a position of having to defend himself. I'm concerned about those kinds of resources.

He also mentioned head office delays, but Mr Marchese has mentioned that there have been some changes that have begun, and that certainly was brought forward by members of the commission, which may be beginning to place them on the right road.

The other is—some might understand the details of the commission better than most members of the committee might, although some members may have great detailed knowledge—that he talked about term limitations on commissioners and how the term limitations were not necessarily helpful. He talked about the fact that it was hard for commissioners to get experience in dealing with these matters.

While I'm not saying commissioners should sit for life, I do think that to limit people who have demonstrated that they are fairminded and good commissioners to two terms on the commission may not work in the best interests of those who come before the commission, that if you've got good commissioners and you want to keep them on, that's fine; if people aren't doing their job appropriately, then they be taken off.

I think the other thing we have to have to make it acceptable to people in the province—and some people are never going to accept a Human Rights Commission, I understand that—is that it must have all the trappings, all the indications of fairness. If people perceive that the composition of the commission is such that the people on it are either generally against complainants or generally for complainants, that becomes a problem.

It emphasizes a need of government, whichever government is there, to try to look at a process that will bring the fairest possible commissioners on the board. Perception is important, and perception isn't always right, but I think that helps to have the commission accepted

among many in the population who today don't find it particularly acceptable.

I'll leave it at that because there may be some other members who want to comment on that and add to what I've had to say.

Ms Carter: We haven't commented on the need for better consultation with the aboriginal community and I think that should be in there.

I'm just quibbling about what you said about what Mr Juriansz said. He's not advocating, I don't think, that commissioners should take a bigger role. I know he comments that it's a shame to ditch them when they've just got experience, but I believe what he's actually recommending is that salaried people take on more of the burden. He sees a need to have more expert employees and to have the chief commissioner sort of as a final arbiter. I think that's what he's suggesting.

Mr Bradley: I think it's worthy of Mr Pond going through his brief and looking at them. I think you're right that he makes those kinds of recommendations. I simply mentioned the term limitations because I think there's a significant movement out there to limit terms of everybody on everything.

Ms Carter: The current system is too part-time to be effective.

Mr Bradley: Yes, I think you're right there. I read that into his comments as well, that it's very difficult to have part-time people developing the expertise that's needed. I know there will be arguments that can be made on both sides of that. Some people believe it's good to have those fresh, outside-the-loop views on a commission; others think you should develop some expertise on that.

Ms Carter: I think the point is that the whole question of how complaints are dealt with does seem to be a problem and does need very careful study.

Mr Marchese: Just a few comments on what Jim was getting at, particularly around the whole issue of neutrality and the whole issue of definition of "handicap": We talked about that with the commissioner yesterday—I think Alvin asked the question and I raised the whole question as well—about how respondents feel that the investigators are biased against them and how claimants and advocates feel that they're biased against the claimants.

Part of the comment we made to her was that the perception of course is what becomes the reality. How do you deal with that and how do you deal with the fact that you say that the system of course operates neutrally, that they're not biased? You have a problem where you're doing things neutrally, you say, but everybody believes you're biased, so you've got to deal with that. How do you deal with that?

1140

I'm not sure whether there's anything in the recommendations that have come forth, other than the Cornish report, for the most part, that might deal with that particular issue in terms of how you get to separate the roles. The problem is that they're performing too many roles and so inevitably you're going to get accusations of

bias, so that's a particular problem.

In terms of the definition of "handicap," I think it's a problem, because if we do what you were suggesting, or what Mr Juriansz was suggesting, what you may then need to do is to define the categories of disability. If you do that, then you have litigation around that, presumably, and around what isn't there. The sad thing is that you'll have to adjudicate them case by case, and yes, it takes time. But I'm not sure we can get to your point or Mr Juriansz's in that way, and I'm not sure I have a solution either, other than adjudicating and making that system more efficient.

Mr Bradley: It won't be easy. I agree with you entirely.

Mr Marchese: Those are the two points on those two things. I then thought, as you were speaking, about what we should do about the report. I might have stated briefly how I thought the framework might be, but what we need to do is identify what the present system is doing and what the respondents who came here today suggested, because the commission is already doing some of the things they suggested, but there were other suggestions that are additional attempts to make it better. So we identify what the system is doing, list all the things that the presenters suggested that would improve it so that we could look at those changes, and say yes, those are good, or not.

The third point is to see how the whole Cornish report fits into either those additional suggestions or the other suggestions they haven't made that would revamp the whole system altogether.

I'm not sure whether I have comment on the structure of the way that should be presented, but I think those three things need to happen so we can get a better view of what we need to recommend.

Mr Curling: I like the structure that you lay out there. I'll be concerned too about any new things we want to put in it, and I heard Ms Carter saying, "What about the aboriginal people?" Although I think it's important itself, we've got to concentrate ourselves on what they presented, what was raised and deal with that. We could actually get into, "What about the others who have not yet been included or not commented on?" and the report could get so wide with what's not been said here. We should concentrate on what was presented by the commission, as you said, what was heard, by the presenters, and the comments made by colleagues here to get questions out of the individuals.

One of those was things like training. It was raised, and we didn't raise it and I'm just concerned. I'm sure this is a preliminary aspect of it. Some of the things we may go back to and look at the approach and say, "We should have that in place," in other words, training about alternative dispute resolution, which has been mentioned here.

But I just want to say, on the overall framework, that we must concentrate on what was presented here in the last two weeks.

The Chair: There was one point I think where the commissioner actually said, on the subject of training,

"We really are working on that," and then she went back and said—the Hansard has it all but she did definitely make a comment; she acknowledged that there was a problem with the training.

Mr McLean: Yes, she did.

Mr Marchese: Just on that, Madam Chair, I think the point is that there may be clearly things that need to be done with respect to human rights and aboriginal people. I would find it useful that if Chief Gordon Peters had a presentation he was going to make that is in writing, if he could send it to us, then we would have a sense of what could be part of a report so that—

Mr Curling: Well, we didn't. One of the things, though, that we tried to do was to get a balanced presentation here. As we went along, and I want it to be on record that the staff, the clerks and all those who put this together did a terrific job even to get people here, what we were trying to do was get a balance and this was almost thrown off balance at times when people didn't come. The chief was one of the ones we wanted really badly for a presentation, but if it is not presented, I don't think that we start pursuing to start to say—

Mr Marchese: No, but if it's a written presentation that he would have made to us, if it was available, it would be nice to have.

The Chair: I think that's a fair question. We did try to schedule him again and he told Ms Mellor, the clerk, that he just was too busy at this point because there was so much going on that he had to respond to. But definitely I think we could ask his office if he had a prepared brief. Other committees accept prepared briefs all the time. It is a big void, actually.

Mr Curling: Yes, but the effort was made by us.

The Chair: Oh, us, it was.

Mr Curling: My feeling now is that if we start to say, "We should have that," and that's the approach we want to make, in all honesty many of these were being cancelled. We even tried to extend. We tried to accommodate.

Mr Marchese: We appreciate that. You don't have to give any apologies.

Mr Curling: No, I'm not. I would never apologize for the government or whoever else. I'm just saying to you that we're trying to do that. We are restrained by the time we have and the presenters we have.

Mr Marchese: I appreciate that. All we're saying is that if he had a written submission to make, it's available, to send it. If it's not available, then we don't have a report. But he was to have been one of the presenters, and if he had a report, it would be nice to have it. Do you see what I'm saying?

The Chair: Do you wish the clerk to call his office and ask him if he has it in writing?

Mr Curling: If he has it in writing, fine, but it would have been nice—you see, the way it was structured, Mr Marchese, as you know, we brought the commissioner back here to say: "These are the things. Could you comment on some of the things we heard?" In other words, if the chief had presented something, then we

could have had that opportunity to ask the commissioner.

The Chair: That's true.

Mr Curling: I think beyond that now, we're trying to write a report—

The Chair: He does have a point that the commissioner didn't have a chance to respond to Chief Peters either.

Mr Marchese: It's true, but to simply not have that information that's available would be a mistake, an oversight even. I just think it's a good thing procedurally to do.

The Chair: If you two agree, it's a consensus, so it's up to you two.

Mr Curling: My feeling is that if the chief wants to be asked to present it, we will say, "In addition, here was what was presented," and let the commissioner react to that, and us, without making any deep comment on that, because I would have really liked to ask the commissioner to comment on that. Tell the chief to present. If he has something in writing, that's fine.

The Chair: There is time. In fact, obviously we won't be dealing with this report until the House resumes. Why don't we ask the clerk to phone Chief Peters's office and ask if he had a prepared brief? If he did, then the clerk will circulate it to the commissioner and to the members of the committee. In that way, the commissioner may read it and respond to the committee and it can deal with her response. Then you all have a copy and so does Mr Pond and we can discuss it at our next meeting. Is there any further discussion?

Ms Carter: Just on this question of aboriginals, I seem to remember when I was on a committee discussing the Constitution, which of course came to nothing, there was a question that there might be a division in the aboriginal community between elements that weren't concerned with having a Human Rights Code imposed upon them, and other elements, notably women, who felt that to have that in operation and including them was an asset to them to protect their rights. I don't know what would be in Mr Peters's presentation, but I think there's just a caveat there that we should be aware of possible different opinions within the aboriginal community.

The Chair: That's important, I know. It's interesting to observe that community, because I think the women in that community are just starting to be given some opportunity. It took us to chain ourselves to the railings a few years ago. There certainly are stated concerns by some members of that community as to their being held back.

Mr Bradley: I think you're correct there, Madam Chair. I am also concerned, and the member for Peterborough has made a good point in expressing concern that the view that is presented may not be the view of everybody. When you get into the whole issue of aboriginal self-government, there are differing points of view from many of the groups that represent women within the community and men within the community. There's sometimes a divergence of point of view.

I'm a bit concerned about that as well and I don't know how we address that, because we're still going to receive Chief Peters's submission, should he wish to

make it, but I don't know how much that will reflect what some women within the aboriginal community feel about issues. There has been some divergence of views expressed to the public at large. I think that's worth noting, at least, on the record.

The Chair: I'm just going to remind committee members that the committee is sitting on Tuesday and Wednesday of next week to review government appointments.

As far as the drafting of this report is concerned, the committee has already put out for draft preparation a report on the Ontario Food Terminal and the Workers' Compensation Board, so this will be the third report that will be coming back to the committee in a draft form for your review.

Because of the timing of the other two reports, would it be acceptable to you if we let Mr Pond find out from Ms Mellor, the regular clerk of the committee, what the timing would be for this report to come back? There would be an understanding that Mr Pond, when he's given that date by the clerk, would get the report to the committee members a week in advance of when we would be dealing with it so you would have lots of time to review the draft. Is that acceptable?

Mr Marchese: Sure.

Mr Curling: Sounds good to me.

Mr Pond: Keep in mind, though, that because this is the first time we've looked at this particular commission, what you'll get from me the first time around will be very tentative, full of options for you to choose from, that sort of thing. I suspect that with regard to the other two

agencies you've just mentioned, your reports are further down the road.

The Chair: Not actually, no. But I think the main thing, in fairness to you, is that you have some ballpark idea of when to have it prepared. That's also important for the committee to have. With our schedules, we need a week to read something on our desks before we have to deal with it.

Mr Pond: Yes, we do that normally.

The Chair: Yes, that's excellent. Anything further?

Mr Curling: I don't want to put any pressure on the Hansard people, but what kind of time do we have even to get Instant Hansard, to go through that? I think there are things that could be in there that would be helpful.

The Chair: There has been a concern reflected by the clerk on your behalf to the Hansard office that we would get them as quickly as we can, and so the Hansard office is putting a priority on them. Hopefully next week.

Mr Curling: I'm just saying the timing of that and the final report.

The Chair: Oh, yes, we will have Hansard before we deal with the draft report. Definitely.

Mr Curling: Okay.

Mr Bradley: We also have the pressure of the Chair, who I'm told has considerable influence in this regard.

Mr Curling: That is so. True, I've heard that.

The Chair: There is no further business. The committee stands adjourned, and I thank you for your cooperation this week.

The committee adjourned at 1154.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

- ***Chair / Présidente:** Marland, Margaret (Mississauga South/-Sud PC)
- ***Vice-Chair / Vice-Président:** McLean, Allan K. (Simcoe East/-Est PC)
- *Bradley, James J. (St Catharines L)
- *Carter, Jenny (Peterborough ND)
- *Cleary, John C. (Cornwall L)
- *Curling, Alvin (Scarborough North/-Nord L)
- *Frankford, Robert (Scarborough East/-Est ND)
- Harrington, Margaret H. (Niagara Falls ND)
- Mammoliti, George (Yorkview ND)
- *Marchese, Rosario (Fort York ND)
- Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
- *Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Fletcher, Derek (Guelph ND) for Mr Mammoliti
Jamison, Norm (Norfolk ND) for Mr Waters

Clerk pro tem / Greffière par intérim: Bryce, Donna

Staff / Personnel: Pond, David, research officer, Legislative Research Service

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Tuesday 15 February 1994

Journal des débats (Hansard)

Mardi 15 février 1994

**Standing committee on
government agencies**

**Comité permanent des
organismes gouvernementaux**

Intended appointments

Nominations prévues



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Clerk: Lynn Mellor

Présidente : Margaret Marland
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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Tuesday 15 February 1994

The committee met at 1000 in the Trent Room, Macdonald Block, Toronto.

INTENDED APPOINTMENTS

The Vice-Chair (Mr Allan K. McLean): I call the government agencies committee to order. We're dealing with intended appointments.

MIRIAM KAVANAGH

Review of intended appointment, selected by third party: Miriam Kavanagh, intended appointee as member, Ontario Highway Transport Board.

The Vice-Chair: The first appointment we have is Miriam Kavanagh, if she would take a seat up at the front. You have the opportunity to make an opening statement if you wish, or we can go right into questions.

Miss Miriam Kavanagh: Go right into questions.

The Chair: We'll go right into questions. As it's a selection by the third party, Mr Sterling will lead off, for 10 minutes.

Mr Norman W. Sterling (Carleton): What qualifies you to take on this position?

Miss Kavanagh: My legal training is probably the main answer to that. I've been practising now for 14 years. I have a corporate and commercial real estate practice with a very heavy emphasis in aircraft-related and airline-related matters, which of course is a transportation area as well.

Mr Sterling: What is your understanding of the amount of time and effort that will be required on this board?

Miss Kavanagh: As far as I know, this is a part-time position. It would be a couple of days a month, and I would know in advance so that I could book and plan my time accordingly.

Mr Sterling: I see. As I understand the highway transport board, its business has been falling off over the last number of years because of the new legislation dealing with the regulation of commercial trucking. What is your understanding that their main business is now?

Miss Kavanagh: Regulation of the bus industry.

Mr Sterling: Have you had any experience with that industry at all?

Miss Kavanagh: No, I have not.

Mr Sterling: Do you have any political affiliations at all in the past?

Miss Kavanagh: No, I do not.

Mr Sterling: You've never been a member of any political party?

Miss Kavanagh: No, I have not.

Mr Sterling: And your practice of law, where are you located?

Miss Kavanagh: Where do I practise now? At 70 University.

Mr Sterling: And you intend to continue practising there?

Miss Kavanagh: Yes, I do.

Mr Sterling: So this would just be a part-time—

Miss Kavanagh: That's right, yes.

Mr Sterling: Are you by yourself or are you with other partners?

Miss Kavanagh: I'm a partner in a small firm. There are five lawyers in it.

Mr Sterling: And there wouldn't be any problem in dealing with that?

Miss Kavanagh: No. I've spoken to my partners and they've encouraged me, actually, to pursue this.

Mr Sterling: How did you find out about this position?

Miss Kavanagh: I was contacted by David Edgar, who is an assistant to the minister. He had spoken to a friend of mine, and that was how the connection came in. I think they were looking for somebody with legal training.

Mr Sterling: Why was the connection made to you? I'm just interested, because you don't seem to have any expertise directly related to their duties.

Miss Kavanagh: I think it's because of the airline side, the transportation nature of that, which is basically the movement of passengers and goods, the same as buses. I have that connection.

Mr Sterling: What kind of work are you doing there? Administrative work or administrative law?

Miss Kavanagh: No, I do the corporate and commercial side of airline-related things, tremendous amounts of aircraft leasing.

Mr Sterling: For large or for small or—

Miss Kavanagh: For regional carriers and for charter operators in Canada, lots of work into the United States, lots of stuff across Canada. Our firm has a specialty in doing airline-related matters, so we get lots of Canadian clients.

Mr Sterling: How long have you been called to the bar?

Miss Kavanagh: Called in 1980, so for 14 years.

Mr Sterling: And you've never had a problem with the law society?

Miss Kavanagh: No, I haven't.

Mr Sterling: I have no further questions.

Mr Daniel Waters (Muskoka-Georgian Bay): You stated that you worked with airlines and not with trucks and buses. When you work with the airlines, from what I'm able to grasp, it seems you do a lot of, shall we say, negotiating.

Miss Kavanagh: That's correct.

Mr Waters: So you bring those skills with you to this

type of thing dealing with bus travel, which, as you stated, is movement of people, or trucking, which is the movement of goods. You'd be bringing with you those negotiation skills and indeed all the things you've learned with the airline industry.

Miss Kavanagh: That's correct.

Mr Waters: Do you have any feeling about whether the regulations on buses are adequate at this time?

Miss Kavanagh: I find that one very difficult to answer, in that I am pretty new to this industry.

Mr Waters: I was just curious about that. Do you see any new issues coming forward, maybe a change in direction for the bus and transportation industry? Working with the airlines, I would assume you're constantly seeing change there. Do you think the same thing will happen commercially in the ground modes of transportation?

Miss Kavanagh: There seems to have been a trend in the past towards deregulation. Whether that would continue, I don't know.

Mr Waters: Based on the experience you have with airlines, do you think that's good or bad for us?

Miss Kavanagh: I think a certain amount of regulation is necessary. The marketplace will sort itself out to a certain extent, but it still needs some parameters to work within.

Mr John C. Cleary (Cornwall): Welcome to the committee. You must have some ideas about some of the regulations and what you would like to see, especially in the bus transportation end of it, important to you evaluating public necessity and convenience. Do you have any views on some of those things?

Miss Kavanagh: It seems to me that public necessity and convenience would turn on the facts that are presented at the time, and you would have to evaluate those facts and make a decision accordingly.

Mr Cleary: I'm sure that you, being a lawyer, would have some views on the present state of the bus regulations.

Miss Kavanagh: Again I have to say that I'm not as familiar with the bus industry as I hope I'm going to get to be. I feel it would be a bit presumptuous of me to even answer that question.

Mr Cleary: Are there only three members on your committee now?

Miss Kavanagh: No, I believe there are seven or eight. I think the act says it's three, but that number has been expanded to seven or eight. I was just asking that question this morning, actually.

Mr Cleary: We've heard a lot of stories from some of our transportation companies about the longer transports; some were bitterly opposed to that. Would that fall under your mandate?

Miss Kavanagh: It's just the extraprovincial movement of trucks. I don't believe it's the length of trucks or licensing of trucks. If they want to move from one province to another or across Canada, that is reviewed by the board, but I don't believe the other is.

The Vice-Chair: Thank you for appearing before the

committee this morning. That was one of the quicker interviews. We wish you well in your endeavours.

Miss Kavanagh: Thank you very much.

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MARY LYNN BIGGLEY

Review of intended appointment, selected by official opposition: Mary Lynn Biggley, intended appointee as member, Kingsville Police Services Board.

The Vice-Chair: It would be interesting to know if Mary Lynn Biggley is here this morning. She is. Please come forward and have a chair. You have the opportunity to make a small presentation if you'd like, or we can go right into questions.

Ms Mary Lynn Biggley: I would like to take the opportunity to thank you. This is certainly a privilege at this time, when we are looking at community policing, when the educational systems are looking at partnerships to look at the issues of youth violence, of community violence. It is indeed an exciting time to be here.

Mr Cleary: Welcome to the committee. How did you become interested in being a member of the police services board?

Ms Biggley: Actually, it started a few years back. I live in a small town, as you know. Kingsville is about 5,000. Indeed, community policing is very important because there is a such a close liaison. The real interest came with my responsibilities at the Essex County Board of Education in equity issues, in human rights, in youth and the role models they needed within our community.

While I had submitted my application some time ago, I was confirmed that the right decision was made after working in direct liaison with our county police detachments, the OPP and the city of Windsor detachment, in a joint human rights investigations course with police services and the Essex county board and St Clair. It confirmed that there was indeed an importance of community partnerships.

Mr Cleary: How did you find out about the opening?

Ms Biggley: It was advertised in our newspaper.

Mr Cleary: Now that you're going to be on the commission, anyone I've ever known who got on always thought changes were needed. What changes would you like to see?

Ms Biggley: Definitely more community policing, and to broaden the scope and the understanding. It has been a philosophy within police services, but I'm not sure that has been communicated effectively to the community we service.

Mr Cleary: Some tell me—maybe not in your particular area, but in other parts of Ontario—that they figure auxiliary police could play a larger role in some things with police departments, especially ladies auxiliary police. What are your views on that?

Ms Biggley: On auxiliary policing? You caught me: I certainly wasn't prepared for that. I think there is a role for auxiliary policing. As I mentioned, I come from a very small town, a very small detachment. Auxiliary policing would definitely be a new concept for that particular detachment.

Mr Cleary: Thank you very much, and good luck.

Mr Randy R. Hope (Chatham-Kent): Thank you for coming before the committee. I'm just down the street from you guys, in Chatham.

A couple of questions about amalgamation. I'm wondering how familiar you are with the restructuring of policing in Kingsville. The Windsor Police Services Board is trying to amalgamate all the smaller communities and saying, "We'll handle the operations for you." I'm just wondering about your viewpoints on the structural aspect.

Ms Biggley: I think the economic status within this province in every cranny and sector has indicated that we no longer can operate individually, that we have to work in partnerships.

I am concerned with small detachments which are struggling to be competitive or to maintain the same standards as the larger detachments; for example, wife assault, sexual abuse. We're asking our smaller detachments to be experts in all fields, whereas larger detachments have the funding to have experts and you can devote your time and energy to being knowledgeable in all areas.

I would have to say I do promote a form of partnership. I'm not saying complete amalgamation, but certainly it is worthy of investigation and review.

Mr Hope: You brought up in your opening remarks the human rights aspect. I would like to ask your views on employment equity, as we in rural communities are now trying to be reflective of our communities, trying to put women, visual minorities, into our police services. I wonder about your views on employment equity.

Ms Biggley: My responsibilities at the Essex County Board of Education include employment equity, anti-racism and human rights issues.

As we are looking at the projections for this province, not within the next year or so but as we move towards the year 2000 and beyond, if we don't start looking at our target groups within employment equity and the role that women can play in supporting the positions that are going to be available in the future—I say women, but I mean all members of the target group. Definitely women and other members have a particular role in policing, as they do in other sectors, in their relationships with the clients we service, in terms of the mannerisms in which they would approach their responsibilities in policing. Definitely, I am very supportive of employment equity.

Mr Hope: You mentioned wife assault. As one who's taken an interest, even before being elected, how familiar are you with the new policy? I wonder if you could comment on the new policy.

Ms Biggley: The new policy for police services: I have skimmed over the policy for police services. Those who initiated the policy certainly deserve to be credited for that. I will be taking part tomorrow evening, in fact, in a wife assault/violence against women and children seminar.

Mr Hope: Once the committee proclaims you're on the police services board, then what will be the makeup of the board? If you are sitting on the board, would you

be the sole female on the board?

Ms Biggley: No, I will be the second female on the board.

Mr Ron Hansen (Lincoln): What would be your priority in community policing? What area would you like to get into to make an improvement in what you have in Kingsville right now?

Ms Biggley: Definitely our first area of concern, and I mention it because I was invited to the last police services board meeting as a member of education, is to look at the concerns we have in our town over youth violence. That doesn't indicate that we have problems such as in larger areas; perhaps about 1% to 1½% are known to the police and are repeat offenders.

Our great concern is about the fringe group or the middle category. It is targeting on the youth, our future generation, those people who will govern our town and our community, that we need to focus on right now. We need to set role models for positive policing opportunities. We also need to set positive role models to show these kids that it's okay to be okay, it's okay to stay away from violence and drugs.

As I said to the police chief and the chairman of the board at our last meeting, this whole generation we have right now is angry, has no hope and has no vision. When you live in a small town where there are no services, no pool, no community centre, no teen group, what can we expect? They're exerting their frustrations, and unfortunately, the exertion is in a very negative manner. We need to strengthen our community policing primarily towards out youth as our first focus group.

Mr Hansen: Do you agree that the police officers should be out of the cruiser and on the street?

Ms Biggley: Definitely.

Mr Hansen: And possibly having a coffee at one of the cafeterias of one of the schools? He's more visible in the community than isolated in a cruiser.

Ms Biggley: Absolutely.

Mr Hansen: What type of training? You've mentioned some areas. Are there important training areas with youth that these officers need? The other thing you have to consider about training is budget: It costs money. Looking at the budget on training, what would be your first priority?

Ms Biggley: Are you speaking specifically of the youth area?

Mr Hansen: What is your own priority? You were talking about youth as one of your priorities. That could be the priority.

Ms Biggley: I'm asking my teachers to give of their own time. I am so linked to youth and policing and conflict resolution and violence prevention. Without any prior knowledge, I would like to focus on police understanding youth and more effective communication skills. When I speak about communication skills, it's not only for youth but for the public in general, in conflict resolution, in mediation, in downplaying an incident before it becomes a violent incident. All officers—male, female, in cruisers, out of cruisers—need that kind of in-servicing.

We need to reduce our expenditures, and expenditures come when you're laying charges. If they can be out there as community police officers, networking—they need to understand how to network. Police officers are those people who are used to having the authority, are used to having the power. In a small town they are seen as the power players in the community. We need to show them a different style of communication.

1020

Mr Hansen: As you know, the OPP and the regional police and the local police forces will be issued semiautomatic guns. Do you feel this is necessary? You know the reasons they were issued, but what are your feelings?

Ms Biggley: I understand recently that gas station attendants and police officers rank in the same death rate, but I do believe our officers need to be prepared in an instance where they would need that. If you're putting them in a disadvantaged position to begin with, the message is out there on the streets. But also with that there has to be some very strong training and in-servicing so they are capable of handling those weapons. I'm not saying they're not at this point, but the concern for the public is that they will use them randomly or in a moment of panic.

Mr Waters: You were talking about policing in small communities. Myself, coming from a small one, one of the things I would like to see us do is get ahead of the police. I would like your ideas of what small communities can do to deal with the situation before there's police intervention. I believe that in small communities, per capita population, the crime rate is probably higher than it is in the big cities. It isn't as violent, but the vandalism on main streets and things like that. I find there's nothing for our children to do. In big cities there are a lot of free things or relatively cheap things you can access, whereas you can't play anything, can't do anything in a small town without paying. What can we do in small towns?

Ms Biggley: I can tell you what we're doing. We are looking at developing a community-based task force, and this was initiated by education, within my responsibilities as projects officer. We are forming a partnership with the police. I will share with you that on our first visit, I was concerned about the traditional police approach, which is a very direct, no-questions-asked, "We will do this" type of approach, whereas I'm looking at it from another: Let's look at prevention.

You're certainly right that in a small town, while there is that good group of kids, you're noticed and you stand out, you don't blend in with the community. We're looking at developing the community action plan. With the other female member—she and I are quite well acquainted—we are looking at a youth centre which will be not only a games/sports/activities/social centre but also a leadership centre, with police definitely involved.

The Vice-Chair: We'll move on to Mr Sterling.

Mr Sterling: I'm going to give a bit of my time to Mr Bradley, because he was late coming in.

The Vice-Chair: In this committee we're allowed 10

minutes each. If you want to transfer some time, we have to have unanimous consent from the committee at that time.

Mr Sterling: I thought I controlled that time. Never mind. I'll follow your leadership.

How many people are on the police force in Kingsville?

Ms Biggley: I believe there are eight officers. I'm not certain of that.

Mr Sterling: What is your budget?

Ms Biggley: I do not know; I have not taken time to access that information.

Mr Sterling: I find that odd. One of the big problems we're facing in our communities is high property taxes, which are basically the financial support for our police. How are you going to pay for these expanded services you've been talking about getting the police involved in?

Ms Biggley: As you'll recall, my comment was that this is a community action plan we're looking at. I know the Solicitor General's office has a focus on community policing and that there are mandates that will come down internally, through that stream, for the definition of community policing. The other activities are community-based. We are looking for funding, and certainly in a small town there's a great deal of community support to make these things happen.

Mr Sterling: Have you ever volunteered in terms of a community policing endeavour?

Ms Biggley: Certainly my responsibilities at the board, though not on a direct volunteer basis, were beyond—

Mr Sterling: So you've never given freely of your time to do that?

Ms Biggley: There hasn't been anything in our community to do. The whole focus of community policing and the implementation is new.

Mr Sterling: So you have now no idea of the costs? You don't even know how many police officers there are in town?

Ms Biggley: That's correct.

Mr Sterling: What qualifies you to sit on this police commission?

Ms Biggley: If you look at my background in terms of equity issues, human rights, employment equity, anti-racism, I do feel I have contributions in those areas.

Mr Sterling: Are you a member of any political party?

Ms Biggley: Under human rights, when we're looking at equity, if that's a bona fide job requirement I would be happy to answer that.

Mr Sterling: I'm asking you if you are a member of a political party.

Ms Biggley: No.

Mr Sterling: Have you ever worked for a political party?

Ms Biggley: No.

Mr Sterling: I'm troubled by your remark that gas

station attendants and police officers have the same risk in terms of death rate. Maybe they are, but I'm troubled by that in terms of an attitude you're expressing, that you're not empathetic to the dangers police officers place themselves in each day.

Ms Biggley: That perhaps was a misinterpretation. I made that quotation from a recent newspaper article that was in the Windsor Star this past week, when they were talking about the same issue I was questioned on. I certainly understand the dangers. I've worked closely with Windsor police services. I know what the danger is. I have a son who wants to be a police officer, and has from the moment he knew that police officers existed.

Mr Sterling: What do police officers get paid in Kingsville? Do you know?

Ms Biggley: I'm not familiar with their budget structure.

Mr Sterling: Thank you very much.

The Vice-Chair: Do we have unanimous consent for Mr Bradley to use the time? Thank you.

Mr James J. Bradley (St Catharines): Thank you to Mr Sterling for that consideration.

My first question deals with the issue of nepotism. It has been alleged that on a number of police forces in Canada one of the ways one has a good chance of getting a job is through having someone else on that police force. The rate can be as high as 27% or perhaps as low as zero, I don't know. Do you believe there should be a circumstance or a ruling whereby if there's one member of a family who is a member of the police force, no other members of the family should be permitted to be a member of that police force?

Ms Biggley: I believe that may be important now as we're looking at an employment equity strategy within police services, because you tend to hire relatives or like people. That does not open the doors for women and visible minorities.

Mr Bradley: Do you believe the police force composition, in terms of employment equity, should reflect Kingsville or Toronto?

Ms Biggley: Definitely Kingsville.

Mr Bradley: Do you believe a police force should have to fit provincial criteria in this regard? Should that override a local component? In other words, if the provincial goal were one and the local goal were another, which should override?

Ms Biggley: I believe each community needs the autonomy. Therefore, you should be looking at local, guided by provincial, criteria.

Mr Bradley: I don't know what the toughest tavern is in your part of the province, but let's make up a name of a tavern.

Mr Hansen: Bradley's Tavern.

Mr Bradley: The XYZ Tavern, and a big brawl takes place. Should every member of the police force who is a member of the active police force, not the civilian force, be able to break up the brawl in that tavern? In other words, should that person be physically able to break up a brawl at the toughest tavern in Kingsville?

Ms Biggley: Are you heading towards another employment equity question?

Mr Bradley: Yes.

Ms Biggley: In employment equity hiring practices, employment equity is not to give preferential treatment; employment equity does not mean hiring lesser candidates. There is a minimum qualification, a bona fide qualification, and if a police officer is required—and I use that as a term; male, female or whoever—they need to have those minimum qualifications. The safety of their fellow officer is at stake. I'm not at any moment suggesting that a female should get in with lesser qualifications.

Mr Bradley: Do you think there's a danger that if we spend all our time trying to make our police force totally reflective of our community, in fact we'll have a circumstance where some members of the police force get to direct traffic and others get to break up the brawl at the tavern?

Ms Biggley: I would hope not, because if the chief is allowing that to happen, then he's not fulfilling his mandate as a chief, and I say "he" because our chief is a male.

Mr Bradley: In terms of budget, should the Ontario Police Commission have the right to overrule the local elected authority on the police budget? Someone will correct me if I'm wrong, but I think that's always been the way, that you go to the Ontario Police Commission when you don't like what the local council gives you. The chief says, "If I don't get this, crime will be rampant in downtown Stittsville," which is in the other end of the province, but the chief will often say this.

Do you think what should override is the local elected body's view of the budget, or should there be an appeal to the Ontario Police Commission, which can then overrule the local body and slam the local taxpayers with a tax increase as a result? That's a pretty loaded question.

Ms Biggley: It is.

Mr Bradley: The last part of it was loaded, but it's the only way you get a really good answer. With guests, they tend to give better answers then.

Ms Biggley: I do know our mayor has said that taxes will not be increased. I do know, working in a provincial organization, that there are many mandates coming down, and I'm not so sure that people in small towns—and I say that coming from a city environment; I haven't lived in Kingsville my whole life—sometimes they do not have the global view. I would certainly like to see the police commission with an alternative, for there to be some mediation. I'm not saying overruling, but at least some mediation whereby we might come to an agreement.

Mr Bradley: If there's an increase in that budget as a result of an appeal to the Ontario Police Commission, do you believe the provincial government, as it is an Ontario Police Commission, should then have the obligation to make up the difference between what the locally constituted police services board and the Ontario Police Commission have to say about the budget?

In other words, if it were—I'll pull a number out of a hat—\$10 million agreed to locally, and the chief and others go to appeal, or perhaps the commission itself goes

to appeal, they go to the Ontario Police Commission and it says, "Yes, we're going to approve \$11 million," do you think that \$1 million should come from the province if it's prepared to stick the municipality with that much more?

Ms Biggley: I can't see that our province would be willing to do that at this time, and I guess my answer would be no, that we all have to take responsibility for services in our community.

Mr Bradley: So the local taxpayer would take the blast, even though a provincial body had made the decision.

The Vice-Chair: I want to thank you for being before the committee this morning. Your time is over. I wish you well.

Our next appointment is Nicholas Childs, who is the intended appointee as a member of the Brant District Health Council. Is Nicholas here? He's not due to be here until 11. We'll recess for 10 minutes.

The committee recessed from 1034 to 1045.

The Vice-Chair: I call the government agencies committee back into session to continue with our reviews.

NICHOLAS CHILDS

Review of intended appointment, selected by official opposition: Nicholas Childs, intended appointee as member, Brant District Health Council.

The Vice-Chair: Our next review is Nicholas Childs, an intended appointee to the Brant District Health Council, if he would come up to the front. You have the opportunity to make a statement or a short speech, but we like to ask questions. It's up to you. No opening remarks? Then we will proceed with questions.

Mr Bradley: How did you become aware of this particular appointment? Were you approached by a government member or was it made known to you by the government that this position was open?

Mr Nicholas Childs: No. There was an advertisement in the newspaper, the Brantford Expositor.

Mr Bradley: And you applied from that. I'm trying to remember how these appointments work. Was your appointment recommended by the district health council, or was this separate from the district health council?

Mr Childs: I'm not sure I really understand that.

Mr Bradley: It used to be that when the government tried to make appointments to health councils, the local people would say, "You don't have the right to do that. We do it," so you perpetuated the people who were there for ever and ever. I had almost been convinced from that that if it weren't locally proposed, somebody wasn't going to be appointed to the district health council. That is not the case in your case?

Mr Childs: What happened was that I applied through the newspaper, took in a résumé to the health council office, got called and sat before three or four—the executive director and a couple of, I think, former council members. I had an interview process with them.

Mr Bradley: With whom?

Mr Childs: With the executive director of the Brant District Health Council, Catherine Knipe, and with a

couple of—I believe they were former health council members, and there may have been one person present who was on the council at the time.

Mr Bradley: Are you a member of a political party?

Mr Childs: Yes.

Mr Bradley: Is that the New Democratic Party?

Mr Childs: Yes.

Mr Bradley: That answers that question. Do you believe that influenced the fact that the government was prepared to accept your appointment or entertain your appointment?

Mr Childs: I don't think so, no. I've been involved with social service agencies for a number of years. When I met with the executive director and the individuals when I had my interview, the response I made to some of the questions they asked me were influential in their wanting me to be on the council.

Mr Bradley: In the Legislature for many years, of Conservative and Liberal governments, the party to which you belong used to ask questions which suggested there should be a much larger infusion of funds into the health care system. Today as the government, the minister brags, along with the Treasurer, that the increase has been minuscule in the budget of the Ministry of Health. Now that it's 1994 and now that there's an NDP government in power, do you believe we should be trying to restrict the growth in the budget of the Ministry of Health to 1% or 2%?

Mr Childs: I don't know that I'm actually qualified to answer that question. All I'm going to be doing is giving an opinion. With it, like everything else, there are restraints. With councils, with a lot of things, you look at the budget you've got and try to do the best you can with it.

Mr Bradley: Looking at the best you can do with it and the conditions which exist in your part of the province, what have you seen as the effect of the government restraint program, whether it's the social contract or the general government restraint program, on the delivery of health care services in your part of the province so far?

Mr Childs: It seems to have cut back—and I'm not on the health council, so I'm just speaking as Joe Public—on the amount of money coming into the community to deal with some of the problems that arise. People are having to look for different ways, newer ways to use the dollars that are already there to try to meet the needs of the community.

Mr Bradley: There have been people out there advocating, for want of a better term, that user fees—everybody has a different name for them, but in essence I call them user fees—should be utilized as one way of getting more money into the system. Do you believe that, as some people advocate?

Mr Childs: That would depend on, say, a study or something that would get done to find out whether user fees would actually make a difference. Some studies report back that user fees may not make that much of a difference, so it depends on what the aim is, if it's trying to prevent something.

Mr Bradley: Yes, a deterrent fee.

Mr Childs: That's right, if it's being used as a deterrent or being used to increase revenues. But it's not something I have sat down and thought about long and hard and really studied; just a top-of-my-head answer.

Mr Bradley: Proposals have been coming forward now that suggest that as a job creation activity—because people in various parts of the province, your part of the province, my part of the province, are desperate for jobs—and perhaps to attract so-called top people in the medical field, private clinics should be established which would charge people from other countries to come in to utilize that clinic and that that infusion of money could be used not only for the private owner of that clinic, semi-private perhaps, but that money could go into the system. Are you philosophically opposed to setting up those kinds of things? There are proposals now in your area and mine for those kinds of clinics.

Mr Childs: An interesting question.

Mr Bradley: It's a tough one, I know.

Mr Childs: I don't know. I'd have to look at the pros and cons; I'd have to weigh it up. I wouldn't say I'd be totally dead set against it, but like I say, it would need further deliberation. I'd need to look at it closely.

Mr Cleary: I've had an opportunity to sit on a subcommittee of the district health council on different projects and work with our hospitals and with groups that thought they needed a service in our community and worked very hard to get it there, but the district health council was totally opposed to it and it never happened. What do you think your job is on the district health council? How would you work with groups like that to make sure they're heard and they get their input into a project for a community?

Mr Childs: Total community needs obviously have to be looked at, and these days you've got to prioritize and say, "How can we?" You want to try to meet all of the needs. I guess it's an idealistic way of looking at it. You don't want to isolate any particular groups or any concerns that people have, but prioritizing—you've got to look at the local community issues. Some things in some areas are much more important, so they may need looking at. But it's going to depend on the inclusion of all parties involved—action committees, groups, subcommittees—getting all those people together at the table and having a look at all the issues and resolving it from there, as opposed to maybe just one branch or one arm of a committee coming out and saying, "We think this," and then people not looking at it properly.

Mr Alvin Curling (Scarborough North): What do you feel you can contribute to this council? What skills do you think you have that could make this council more effective?

Mr Childs: My background, as I mentioned before, is that I worked with youth extensively for about eight or nine years, teenagers, group homes and different things, doing counselling. I know there are a lot of youth issues being looked at that I've got some background on, and I would bring something in that sense. Also, I spent four years working with the unemployed through the Ontario

help centres. There's a chronic unemployment problem in Brant county, and there's an area that I think is being missed. It's not just getting someone a job; there are a lot of other areas being looked at. That background is also going to be conducive.

Mr Cameron Jackson (Burlington South): Mr Childs, have you ever run for the NDP?

Mr Childs: No.

Mr Jackson: Are you an active member?

Mr Childs: What do you mean by active member?

Mr Jackson: A card-carrying member, you attend meetings, you participate on committees.

Mr Childs: That's a hard question. If that were the definition of "active," I'd say no, I'm not an active member.

Mr Jackson: I'll pursue the question about your strengths with children's services. As you know, the future role for the DHCs probably will entail control over a certain-sized envelope of moneys. The role of DHCs is in transition, and certain groups are going to fare better than others in the hands of a DHC. Mr Bradley pursued the notion of user fees, but user fees can happen in a variety of ways when programs erode and final pickup is with the private sector.

I'll give you an example: speech pathology services. The hospital board cuts it back, so who provides the service? Our DHC in our local hospital just killed our children's speech pathology program. I have 120 people on waiting lists, and the lady who was told by the hospital, "We don't want your program," is now charging \$80 an hour. I've got families making \$16,000 or \$18,000 a year, and they're coming to me in tears because their child has absolutely no hope whatsoever of seeing a speech pathologist for a year.

In my view, your philosophical background could be a strength in that issue. It's certainly "not in my backyard," because people are just allowing this to happen. I wonder to what extent your bias might be an asset in those areas, and whether you might wish to comment about your concern. These are legitimate private sector interests, when it seems the system is quickly cutting those services where psychiatric support, counselling support, and a whole host of programs for young people and children are provided by the private sector. It's just that the DHCs are now in a much more powerful position to say which programs get cut, and I watch that trend as being somewhat distressing.

Mr Childs: If I get on the health council, I'm going to be involved with a group of people, and the total needs of the community are going to come down, as I mentioned before, to prioritizing. But yes, bringing somewhat of a—I don't know if I would call it a bias, but a perspective, maybe, on children's services and youth services, on what I have seen, so at least I can bring that to the table and maybe open up some areas that may not have been open beforehand.

1100

Mr Jackson: Well, you are going to be on the health council, Mr Childs. There's no question about that.

The other area of concern is that the government recently delisted long-term care services, took them out of the OHIP formulary of insured services, and has implemented a rather massive and huge increase, \$150 million across the province, for seniors. That seems to be an area of huge vulnerability. As you come as a young man with an interest and background in youth services, how are you going to be able to counterbalance this huge loss of ground that seniors have experienced with respect to medically necessary services, extended care and long-term care services? This is now at a very critical point in DHCs because they're looking at the models for the delivery of the service provision programs.

Mr Childs: Frankly, I haven't had a lot to do with studying the long-term care issues and those kinds of things, so I'm ignorant as to some of the specifics that are going on. As an employment counsellor, I spent a lot of time working with those 55 and up, so I know of the concerns that have come out of that area.

Mr Jackson: You know how frustrating it is to find services for them.

Mr Childs: That's right, very much so. I do have some background there, so it's not totally weighted down by my—

Mr Jackson: I'm encouraged to hear that. Mr Childs, good luck and thank you.

Mr Hope: First of all, your political affiliation really doesn't mean a whole lot to me, whether you're a Liberal or a Conservative or a New Democrat. I'm concerned about your role and responsibility to your community, as the obligation of the district health councils is going to be expanding their role and their mandate in providing services to their community. I would like to know your understanding currently of the practices going on in the DHC, and how you see your role and responsibility on the DHC to provide services to your community, the people you live with.

Mr Childs: Probably the most focused thing I could talk about is the community-based advisory committee, because that's a subcommittee I have sat on for a few months, and some of the areas we've been involved in there are injury prevention, health promotion, those areas; instead of waiting until after it happens, trying to get it before it happens and prevent some of the problems that arise that cost a lot of money to fix. There are also a lot of mental health areas in the community. There are a lot of addiction areas that need to be addressed in Brant county. Those are three of the areas that I know something about. I know there are other areas and other issues, but not sitting as a council member, they're not things I've really delved into in any great detail or at any great length at this point.

Mr Hope: Are you familiar with the time that will be allocated towards the DHC, with its expanded role and mandate; how you're going to be able to judge your schedule to meet the workings of the DHC?

Mr Childs: I know there's a tremendous time commitment, which I think is key. There's no getting around that, and that's very important. I'm self-employed right now, so I can work my schedule around the commitment

I would have to give for that. There are council meetings, obviously, some of the subcommittees and various other committees and roles we have to play in the community. Yes, it's a great time commitment.

Mr Hope: I was reading your résumé. I find it very impressive, and you've talked about a lot of the things—dealing with youth, with employment, which are all factors of health—you've done over the time period. My colleagues have some questions, but I would just like to say your political relationship doesn't mean anything. When I look at the résumé, whoever did the selection looked at the work you've carried out and found an important role in the future of the DHC for the area. I'd just like to congratulate you.

Mrs Ellen MacKinnon (Lambton): I suspect that one look at my face will tell you what in the world I want to talk to you about. You've alluded to it a little bit. Long-term care is very near and dear to my heart, and I get a little nervous when I hear somebody say it's about that critical or something.

Have you by any chance done any studying in regard to the long-term care that the government has brought out? We've had a couple of studies or reports come out recently.

Mr Childs: I've glanced over the joint task force summary that was done, and I say glanced over it. Really, the answer would be no, I haven't studied at length any of that. I know it is a critical area. It's something the Brant District Health Council is putting a lot of time and effort into. I know it's a great priority.

Mrs MacKinnon: You answered my next question, what role you see the Brant county health council playing in the long-term care. I think you've already answered my question. The best of luck to you.

Mr Hansen: Maybe I missed the answer and you've given it already, but your wish list: "If I wind up being appointed to the district health council, what would be the first thing I would like to do?" I know your area is with youth, but it could be something else. You've given your background, but what would be your number one wish for district health council to do? Sometimes we're not able to achieve it, but a wish, working with the council, not that you are independent.

Mr Childs: You're talking about one specific area where I would say, "Come along and fix that"?

Mr Hansen: That you would say, "This is why."

Mr Childs: Honestly, I'd have to say there really isn't one area. Five years ago I would have said children's services. Now I've been exposed to so much more that it would be an extremely difficult list to even start.

Mr Hansen: Just your number one priority. There are so many issues to be addressed, but we always come into some—

Mr Childs: I honestly couldn't pick just one issue. The focus of the unemployment and mental health—if I were to really encapsulate and say it covers every area, then it would be the area of mental health, maybe looking at expanding what's done there. I'm not sure. That's probably been the focus of my work, in those kinds of areas.

The Vice-Chair: Thank you very much for appearing before the committee. We wish you well.

I don't believe our next delegate, the intended appointee to the Custody Review Board, is here. We could recess for 10 minutes maximum and have a subcommittee meeting, if Mr Waters is here.

The committee recessed from 1108 to 1114.

MARGARET ELIZABETH STACEY

Review of intended appointment, selected by the third party: Margaret Elizabeth Stacey, intended appointee as member, Custody Review Board.

The Vice-Chair: Our next intended appointment is Margaret Elizabeth Stacey, if you would take a chair at the front. You have the opportunity to make an opening statement, or we can go right into questions, whichever you prefer.

Ms Margaret Elizabeth Stacey: The only opening statement I'd like to make is that the drive up from Picton was beautiful today. The sun was shining—such a change.

The Vice-Chair: That's positive. Mr Jackson, questions?

Mr Jackson: Ms Stacey, what is your interest in the Custody Review Board?

Ms Stacey: I've been involved in the service end of the criminal justice system for many years, and I've worked a lot with both systems. In the adult system, there seem to be many checks and balances to assist the adult offender. With the young offender, in a comparatively new system, there don't seem to be that many checks and balances. I saw the role of the board as perhaps becoming one of those balances in the system.

Mr Jackson: Recently, the auditor identified serious problems with the processes of placement for young offenders. Of course the Custody Review Board is in a critical position in that regard. How familiar are you with the auditor's report and what comments would you make about it?

Ms Stacey: I'm not familiar with the auditor's report per se. I am familiar with the problem of placement for young offenders. I've been involved both in establishing an open custody facility for the older young offenders, and I also have seen the problems locally with youth being sent out of the area. I also realize that in times of fiscal restraint it's very difficult to provide those services.

Mr Jackson: Last week we met with the auditor and spent a week discussing this. We found out that the recidivism rate, return offences, is that as high as half the total population of 3,000 young offenders in a given year are back in the system. It was reconfirmed by the ministry staff, what I've been trying to say for a couple of years, that we mix our young offenders inappropriately, in my personal, biased view; have a murderer in with a truancy case and so on and so forth.

The Young Offenders Act allows for a degree of latitude, but in budget restraint and in the absence of this philosophical commitment to change that component, what is it you think you could do to ensure that first-time offenders, who are actually usually third-time offenders

by the time they are in the young offender system, can get a chance at not being exposed to more difficulties because of their placement? I'm very concerned about all the criticisms: the mixing of the population by age, above and below the age of 16, by the seriousness of crime. I think society and everybody who walks the face of the earth can tell the difference between a serious crime and not a serious crime, but under the Young Offenders Act we're not supposed to see them as serious crimes. We're supposed to see them as conflicts with themselves.

First of all, do you agree with some of those sentiments, and would you use that as your conscientious view of placement in your role on the board?

Ms Stacey: One of the things that was stressed when the act was first introduced was that it was supposed to respond to the needs of the offender. It seems to me that regardless of the actual crime, it's the needs of that young person and how they can best be responded to with diminished resources.

The other thing is that the system seems to forget that the offender isn't an integral part of that system. It seems they should have a voice in possibly attempting some remedy that will help their situation in their own future. The Custody Review Board, more than any other part of the system, could possibly provide that involvement of the offender in the system by a certain amount of advocacy and by monitoring, at the child's request, the dispositions that are being made.

Also, I think there's a role for them in advocating the provision of services and drawing to your attention and to others' attention the lack of services and the problem the board itself encounters in its deliberations.

1120

Mr Jackson: But this board, which you will be appointed to, does not report to the Legislature. It reports to the minister.

Ms Stacey: Yes, but I think an informed minister has a much stronger voice.

Mr Jackson: Not according to the auditor. Agreed?

Ms Stacey: I haven't read the auditor's report, as I've commented to you.

Mr Jackson: Well, the auditor was extremely critical. The auditor expressed the exact sentiment, to the word, that you just expressed, because we're dealing with accountability within the legislation. To have a 19-year-old murderer in with a 13- or 14-year-old young girl who's just been introduced to prostitution and has been a runner, in my view, is an absolutely disastrous formula. It is occurring in our detention facilities for young offenders far too frequently while they are waiting for the so-called legal system to process them.

I wish you well with your appointment. I've shared with you my concerns, and I hope it becomes a conscientious imperative for you as well to look at a couple of these areas. I highly recommend you examine the auditor's report and last week's committee deliberations, which was an examination of the ministry's response, the auditor's input and all three political parties. Thank you for coming to Toronto today, and good luck with your appointment.

Mr Hope: Dealing with the Custody Review Board, I heard Mr Jackson's comments about the Provincial Auditor. The Provincial Auditor raises concerns about how the system has been run for many a year, not just since this government has taken office.

The act you'll be working under is a federal act, and I know you understand your role and responsibility, as I've looked through your résumé and the involvement you've had. Just so I'm clear, what you'll be doing is that if an inmate—or a participant in one of the programs, as I would refer to it—feels, in that young offender's opinion, that the facility he's being sentenced to is not going to serve justice, you will go before that young offender to listen to his concerns?

Ms Stacey: Yes.

Mr Hope: What gives you the qualities to be able to listen to the concerns of that young offender?

Ms Stacey: Primarily, many, many years of experience in dealing with offenders, but dealing with them in a way that's slightly different from the ways the administration has had to deal with them. I've dealt with them as an advocate in the community in attempting to harness services, harness programs, find things that suit the needs of that young offender and find some way of helping them reintegrate into society. That's my training, that's my job, that's what I've done: listen, try to hear what they're saying and then try to find a way, a process, that comes up with the best solution for everyone concerned.

Mr Hope: But that process only allows you to make recommendations. You're not a decision-maker. Legislative research always does a lot of work for us in these committees. Their document says the provincial director, who works within the framework of the federal legislation, has a 95% agreement ratio with it. Do you find that because you bring a new flavour, a new idea, to the board that there might be lack of understanding from the provincial director, or do you think you'd be able to close that gap up, instead of 95%, putting it at a 100% ratio?

Ms Stacey: Wouldn't that be wonderful?

The other side of this is that the young offenders haven't always been listened to and they haven't been heard. If they were being better represented, if they were listening more to the staff and to the young offenders, it might not be a 95% agreement, and you might in the end have to look again at what's going on. But it's relatively new legislation and there has not been a process in which many of those applications have come forth. I hope more do.

Mr Hope: I take it by your résumé that you've been around. I don't mean that in a sarcastic way, but you've been around the world, everywhere; the St Leonard's Society, which I'm very familiar with, one of the projects they have in Chatham. You've been involved with BC. I guess your view and where you make a good fit into being a part of this review committee is that you've had not only the province of Ontario's understanding of it, but you've now also incorporated all of Canada and even outside the borders of Canada.

Ms Stacey: Yes, but the most important part for me is that I've always represented a community, that I've

always been part of a community, trying to represent that community's response to many things that happen in the criminal justice system. Our young offenders have to come back into their communities in the end, and the community has to be involved in the process just as much as the young offender is.

Mr Hope: Dealing with the review board itself, do you think there ought to be more public awareness of what you actually will do, if the committee agrees to it, so there is an understanding of what your role and responsibility actually is and who has the final decision-making process? I believe some believe that you're the final decision-maker, but you still have somebody you have to answer to.

Ms Stacey: There's a tremendous amount of education all over the map that hasn't been done yet and remains to be done. I'd like to be part of that.

Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings): Ms Stacey, I'm glad to hear you had a safe and enjoyable journey from the county to Toronto. It's always nice to see constituents when they make the journey out of the county.

Two questions, one related to the size of the board. I must admit, I didn't realize it only takes one member of the board to constitute a quorum.

Ms Stacey: Nor did I.

Mr Paul Johnson: I just wondered if you had any opinion about the size of the board and whether maybe there should be more than one person constituting a quorum. It would seem that from time to time you could have a single person making decisions.

Ms Stacey: It would seem that way. I'm not completely familiar with the process; of course I hope to become familiar with it. The only thing I can compare it to is the kind of situation that happened with the National Parole Board, which is a federal organization, and where eventually, depending on the seriousness of the situation appearing in front of them, they had more or fewer board members in attendance. I think it may be possible at some point, if you have a particularly notorious or difficult case, that you would have to call in more than one board member.

1130

Mr Paul Johnson: That more or less leads into my next question. People in the province of Ontario are concerned about the Young Offenders Act and the fact that offenders' names do not have to be made public. There are two opinions, obviously diverse, with regard to this. Sometimes the nature of the crime is very serious, in the opinion of the public and probably in the opinion of everyone, and I was wondering if you had an opinion with regard to the public's perception that there is a need to identify dangerous young offenders. I don't know if we would want to go so far, necessarily, as indicating where they might be staying in the province, but simply identifying who they are so their communities would know that. One might suggest that where there are dangerous young offenders, their communities usually know anyway, even though it may not be reported in the media. I was just wondering if you had an opinion on that.

Ms Stacey: I was just going to respond that in any community that's generally known.

Mr Paul Johnson: Then do you think it's the media that are upset they can't report it?

Ms Stacey: They've been in the Court of Appeal saying that for weeks, particularly about the Teale case. I can only say that, on the other hand, you don't want to get into a situation like the one you've had in Kingston recently, where people have been picketing indiscriminately in front of Kingston Penitentiary. Certainly chiefs of police have taken the step of publishing names right off the bat if they're concerned about public safety. I think you have to differentiate between public safety and the public's desire for gossip, sometimes. If it's an issue of public safety, that should be the paramount thing, but not just a desire to know or a desire to discuss.

Mr Paul Johnson: Thank you very much. Have a safe trip back.

Mr Curling: Have you ever visited a detention institution where young offenders are being held?

Ms Stacey: Yes.

Mr Curling: Could you give me your impression? Do you feel it's an area that is conducive for young offenders? Did you observe anything where you felt improvements could be made in the institution?

Ms Stacey: I'll be very, very careful to distinguish between "institution" and a place where young offenders are being held. I've certainly visited many small facilities where young offenders are being held, where there are no more than 10, 12, 13 young offenders with specific programs in place. In those facilities, you can make great efforts to make it a homelike situation where there's some relevance to the young offender in it. On the other hand, when you get people who have very serious needs and are seriously disturbed, you tend to get into a larger institution with much more rigid structures, but again the only way of delivering those kinds of programs to those serious offenders. I hope we could always aim towards the small, but small isn't economic, and consequently we tend to get institutions, places where some people can get lost in the numbers. It's quite difficult.

Mr Curling: Even beyond being lost in the large institution of, say, the east detention centre, there are many cases I have seen and which have been reported to me of abuses by having two or three together in a cell; that the seasoned young offender, if you want to call it that, has abused, sodomized the first-time young offender. Some vicious things are happening there. I don't want to say it's wide-scale.

The reason I ask you if you've observed anything there for improvement is that I was thinking about staffing, for instance. I know one of the most impossible places to staff is especially the late shift, the night shift, where at some hours in the morning, at 3 in the morning, when there are two or three in a cell, people can be attacked. Did you, in your visit, see any neglect or need of some support in staffing there? Was it your sense that they need more staff?

Ms Stacey: It came to my attention in that my own philosophy, when I was running halfway houses, was that

I would rather put my best staff on the midnight shift than during the day. We could cope during the day, but if crises were going to happen, they were going to happen at night. It's exceedingly difficult to get the best-qualified staff to work those night shifts, and yet that's when all the trouble goes down and that's when things happened.

The other difficulty I had was in providing culturally relevant services to the people in the institutions. I was fortunate that I was able to make my staff quite broad. But I've gone into other institutions and I couldn't understand why anybody would find anything to relate to in them. They were all middle-aged white men, no female staff, no visible minority staff in those institutions, but the offenders were represented right across the board. There are many areas in which it can be improved, particularly the qualifications and skills of staff who are on at night and the cultural relevance of the services being provided.

Mr Curling: This is an extremely important role you're taking up as a member of the board. The time allocated even to talk with you and exchange ideas and get some of your ideas is quite limited, so I will be jumping from one thing to the other.

For instance, my colleague on the government side raised the point about the board membership; that there is the possibility for 15, but there may be about four now on it and only one makes a quorum. If we're assessing a human life or making an assessment about whether one has parole or where one should go, it always needs another individual's opinion while we are there: "Did you pick up that nuance from that individual we've been interviewing? Did you see all that?"

Don't you find that having a quorum-of-one board is a tremendous burden placed on that individual? That should change immediately. At least two people should be there to assess or make any recommendation, because we're all human beings and we all make mistakes or have a perspective or bias coming to a judgement. Would you, now that you're becoming a member of the board, recommend that at least two people should meet to make any decision on an individual?

Mr Hope: They're not making it about parole.

Mr Curling: It doesn't matter about parole. It's the decision about moving people to an institution or not. We're not talking about parole. Did I mention parole?

Ms Stacey: Yes.

Mr Curling: Well, okay.

Ms Stacey: The Custody Review Board is not like a parole board in that the parole board can make a decision which will effect a release. The Custody Review Board only makes recommendations. As has already been commented, 95% of the time—so far—they've been in agreement with the provincial director. If a system were to come along where it was possible to have the kind of consultation etc, yes, of course I would endorse that.

But I really want to quarrel with your use of the words that it's a "tremendous burden" on one. It's a tremendous responsibility for one person, but a well-qualified person might not find that a burden. They might find it some-

thing that was well within their capability. It seems to me that it's quite different from what I've been involved in before, and I think it's really important therefore that there be a Custody Review Board and that you do this kind of thing, so that it becomes better known to you and you make recommendations.

Mr Curling: The thought of parole came to mind in that if I am in an institution that is not maximum security and I'm moving from that institution to maximum security, it's almost like being sentenced in a harsher reality.

Ms Stacey: Absolutely.

Mr Curling: It's not parole, but these are very important decisions.

Our briefing notes state that 95% of the cases that have been passed on from the provincial director to the board are normally—I don't want to call them rubber-stamped—agreed upon, or similar decisions are taken that say what the provincial director has done is okay. Do you feel it's necessary, for maybe only that 5% of the cases where you may say, "We have to change that decision from the provincial director"? With that margin of error—mark you, it's human lives we're talking about—that 5%, it seems to me all the board does, or that individual does, is just look at that case and say, "That's fine." Or, to put it another way, the provincial director is doing an excellent job. Do we need the board?

Ms Stacey: Or do we need the provincial director?

Mr Curling: Well, I would say we need the provincial director. I'm not quite sure about the board, but the other one does most of the hard work anyhow.

Ms Stacey: It's the 5% that would worry me more than anything else. Donald Marshall was 1%. Those are the people who we have to protect; it's those cases. Fortunately, there are not many, but those few cases are the ones that have to be considered and have to be looked after, because of the rights of the young offender involved.

The Vice-Chair: Thank you for appearing before the committee this morning. You've enlightened us. I would like to thank you and wish you well.

The committee's adjourned until 2 o'clock this afternoon.

The committee recessed from 1141 to 1405.

The Vice-Chair: I call the government agencies committee to order to further review intended appointees.

ANTÓNIO AUGUSTO AZEITONA

Review of intended appointment, selected by government party: António Augusto Azeitona, intended appointee as member, Custody Review Board.

The Vice-Chair: Is Mr Azeitona here? Have a seat at the front, please. You have the opportunity to make a few opening remarks if you would like to, or we'll go right into questions.

Mr António Augusto Azeitona: We may as well go right into questions.

Mr Waters: If I remember correctly, you've been appointed by us to the Custody Review Board. What qualifications do you bring with you that would suit you

for this?

Mr Azeitona: Since leaving community college, I've been a front-line family service worker with the Catholic children's aid for about seven-and-a-half years, and just recently I've been involved with the foster care department of the Catholic children's aid doing a recruitment project for them among the Portuguese-speaking population.

Mr Waters: One of the things we discussed this morning, which I would like your opinion about, is that the quorum for a board meeting is one member. At present, I believe there are four members on the board, and the maximum is 15, but for the purposes of the board holding a hearing, quorum is considered as one member. Do you feel one member is adequate, or do you feel there should be more than one member?

Mr Azeitona: Personally, I feel that to have a quorum you should have more than one member there, but if the legislation says or the committee says that one is enough, I'd just have to go along with what is recommended. It can be open for discussion later on among the committee.

Mr Waters: One thing I've always found fascinating about the board is that it has powers only to recommend, that if it holds hearings and recommends something, that doesn't have to be followed up. I was wondering whether you felt the powers of the board should be enhanced to some point where indeed it has more power, or whether you feel the power the board has now is adequate.

Mr Azeitona: Personally, my understanding is that with the recommendation, the powers the board has right now are enough. To make it more mandatory or more forceful recommendations, I'm not sure the board can make those recommendations. At present the way I look at it, not having sat on the board, is that having just a recommendation, recommending whatever the board wants to the provincial director is sufficient at this time.

Mr Waters: This is your CV. Not only have you some expertise in alcohol and drugs, but working with older-adult centres and a whole raft of things. I didn't realize that until I was glancing through, exactly how wide and varied your background is. You would be able to bring those types of things and concerns, drugs and alcohol, which is indeed a problem our young people have that leads them to be where you will be doing these hearings.

Mr Azeitona: When I applied for this committee, I put some thought into why I would want to be involved, and part of what you said was one of the reasons. I have experience as a front-line worker in child welfare, with juveniles, and understanding their problems, understanding the problems of their parents, and then also understanding the addiction problem, and yes, I also work on the addiction area.

Mr Waters: I know it isn't exactly part of what your job will be, but prevention is always part of a person who has the interest you have; indeed, it would be nice if you didn't have to sit on this committee at a regular interval. I was wondering if you felt there was anything as a society we should be moving towards when we talk about addiction, especially with our young people, everything

from smoking through alcohol and drugs. Do you think there are things we can do, and do better, that would keep some of our young people out of this? I believe the increase has gone from something like 300 juveniles to 1,000 juveniles a day in the province who are held in custody pending hearings.

Mr Azeitona: If you had the optimum scenario and there were a lot of moneys and so on, yes, prevention probably is the key, for addiction or any other thing. So yes, in addition, my recommendation would be that if you do prevention work, that would be a good scenario.

Mr Waters: A dollar spent might save \$10 in the case of drugs.

Mr Azeitona: If you can prevent, that would be the positive outcome, that if you spent \$1, you'd save \$10 in the long run.

Mr Waters: I have no further comments. Thank you for coming.

Mr Curling: Have you ever visited any of the detention units for young people?

Mr Azeitona: I'm familiar with 311 Jarvis, the detention unit.

Mr Curling: Have you ever visited the west detention centre?

Mr Azeitona: East detention, west detention—I probably only have made it as far as the entrance.

Mr Curling: West detention holds the young offenders.

Mr Azeitona: No, I've never gone inside.

Mr Curling: I presume you plan to go there.

Mr Azeitona: What the Custody Review Board does is to conduct the hearings where the youth is, and if the youth is at such a detention, one has to go there.

Mr Curling: I'm sure your appointment will be approved. I recommend to you as one of your first priorities to visit the west detention area, because there are things coming out of there that don't sound too right, and you will be making recommendations to the provincial director about where individuals go.

My interview with you is just to get some more information from you. The perception out there is that crimes by young offenders are at a high, and of course it is said that it is not that high, about 4% higher than three or four years ago. I come from a riding in the Scarborough area, Scarborough North, where the perception is that this is so, but it's really not. Do you feel the young offender crimes being committed are on the upswing?

Mr Azeitona: Personally, I feel a lot of crimes the young offenders commit were committed before, but now people probably talk more about it than before. You have things like the media and so on getting on the bandwagon. Crimes by youth have always been there. Are they worse than before?

Mr Curling: No, more in numbers, that more crimes are being committed by young offenders now than before. Is it on the increase?

Mr Azeitona: It could be on the increase, but I don't

think such an increase is astronomical. This is my personal opinion. I could be wrong.

Mr Curling: Do you feel that the schools are reneging on their responsibility to deal with infractions of the law in their community and in many instances are calling in the police to deal with things they could deal with, that the police are being called in to deal with cases that could be dealt with inside the school system? I'm talking of things like zero tolerance, which may eventually affect many of the people you're reviewing or making recommendations about. I know it sounds outside the mandate of your work, but you're going to have an impact on those you review as they're charged with any criminal act. Do you feel the responsibilities in the school system are not being properly handled?

Mr Azeitona: I think the school system by itself cannot address the issue of zero tolerance. Even though assaults happen in the school, the community has to address that issue. Youth problems are a community issue, and school is just a part of it. But to think that bullies, if you want to use such a term, weren't around before, many years ago, would be a mistake. They've been around, but I think now we're being more sensible and we're not accepting a lot of that type of behaviour.

Mr Curling: I'm going back to the board representation, the number of members on the board. One of my colleagues raised that question. Do you think your job would be more effective if two board members sat down to review a case and make recommendations instead of one? You said you'd much rather see two than one. The quorum being one, you'd rather it be more. Do you think it would be more effective if you had two people sitting down and reviewing a case?

Mr Azeitona: If you have two people, you probably can get a better opinion; it's better to have two heads thinking than just one. But if the regulation has been set up that one is enough, then we have to address the regulations.

Mr Curling: I want to wish you all the best in your appointment. It's a challenging one. As the year goes by, I'm sure you will be challenged and can meet your challenge in the best way you can.

1420

Mr Jackson: May I call you António?

Mr Azeitona: That's fine.

Mr Jackson: Thank you. António, we have seen increases, substantive increases actually, in young offenders in the province, and I suspect you've seen all sides of that, working with the children's aid society. You investigate crimes against children, but you also investigate crimes that children commit against other children, is that not correct? Have you had occasion to work in that field specifically with the Catholic children's aid?

Mr Azeitona: Yes.

Mr Jackson: So you're familiar with the process of going to court, where you are advocating for the victimized child but also you are proceeding under the spirit and intentions of the Young Offenders Act for, say, a child sex offender who is a child himself. You've had experience in this area.

Mr Azeitona: Yes.

Mr Jackson: In your field, it must be very difficult to deal with that. Are you able to separate, in those cases, the responsibilities associated with addressing the needs of the young offender when you're at the same time addressing the needs of the child who's been victimized?

Mr Azeitona: It becomes difficult at times, because in front of me I'll have two children, basically.

Mr Jackson: Chances are you wouldn't have responsibility for both cases. Is that not true?

Mr Azeitona: No, you won't have responsibility for both cases. If it's a case I'm working on, I'll be responsible for that child. The other child will be brought before the court under the Young Offenders Act, yes. But as a social worker, it would be hard to separate sometimes. A social worker to some extent is a parent. Here you have a minor who's caused some damage or problem to another child, and it's really hard not to look after the wellbeing of both kids at the same time.

Mr Jackson: We have problems with our system as it differentiates between—victims depend on who is the victimizer. I know children's aid societies are receiving differential treatment before the courts depending on the age of the child they're proceeding with in various matters. This came up last week in committee hearings as well, unrelated to this appointment. There may be some compelling arguments there for inclusion of an additional person to be a hearing panel as opposed to a single hearing officer for custody.

Do you have any comments about the changing look of our young offenders in this province, the tendency to be more violent, the tendency to—one of our committees attended a corrections institution, and they were very open to admit that there was a huge increase within a given cultural group; a specific country of origin was mentioned. That surprised me, but they felt it was a serious problem for that institution and for that age group. I wonder if you're seeing that similarly within your own responsibilities within Metro Toronto as it relates to child offenders.

Mr Azeitona: The issue about a special cultural group being more prone to violence than other ones—

Mr Jackson: That's not what I'm asking you. I'm asking you in a trend, which is an observation. There are some cultural groups who have emigrated from an extremely violent society, but they're not violent by nature. It is the circumstances, their immediate history, where war has been a daily part of their entire life, but culturally that's not in their makeup. I didn't refer to that. I was referring to the trends, simply your observations, whether you're observing changes. How long have you been a social worker with children's aid?

Mr Azeitona: I was with children's aid for seven and a half years.

Mr Jackson: So you've been able to determine certain trends with your clients.

Mr Azeitona: The primary clientele I worked with were Portuguese-speaking, so my experience would be with the Portuguese-speaking clientele. If I were to see a trend, it would be an increase in Portuguese juveniles

getting in offences and so on. It would be very speculative on my part.

Mr Jackson: That's all relative anyway, to immigration and to a whole matter of factors. Thank you very much. I appreciate your candid responses.

The Vice-Chair: Thank you, Mr Azeitona, for appearing before the committee today. Your review is complete. We wish you success.

MYRTA RIVERA SAHAS

Review of intended appointment, selected by official opposition: Myrta Rivera Sahas, intended appointee as member, Waterloo Regional Police Services Board.

The Vice-Chair: Next on our agenda is the intended appointee to the police services board of the regional municipality of Waterloo, Myrta Sahas.

Mrs Myrta Rivera Sahas: I don't have any opening remarks. It's good to be here and I'm looking forward to this exercise. Perhaps I should say it's my birthday today. That explains all the sequins.

The Vice-Chair: Happy birthday.

Mrs Sahas: Thank you.

Mr Bradley: We're always curious on this committee how people found out about the position and how they were appointed to this position. How did you find out this position was available? Did the local MPP connect with you or anything like that?

Mrs Sahas: I guess it's best to subscribe to the Kitchener-Waterloo Record.

Mr Bradley: A good paper, I'm told.

Mrs Sahas: I saw it advertised in the paper and I applied. That's how I found out about it. Why I applied is another story.

Mr Bradley: Were you given any indication by anybody about why you were selected? Did they say, "We liked your application for the following reasons"? What were they looking for, in your view, when they were trying to get somebody to serve on the board as a provincial appointee?

Mrs Sahas: I don't think any of the individuals with whom I have spoken have said to me that I was chosen to participate here today for any particular reason. I don't recall any.

Mr Bradley: There are new challenges that face police forces in municipalities of any size. If you said 20 years ago, "What does a police force face?" there would be a substantial difference from today. In your view, what are some of the differences in 1994 as compared to even 10 years ago that a police force in the Kitchener-Waterloo area and the regional municipality of Waterloo would have to face, or perhaps issues that have come to the forefront for police forces, wisely, as we get into the 1990s?

Mrs Sahas: I don't know how many of you have ever gone to the regional municipality of Waterloo. If you haven't, I suggest you come. It will be wonderful to have you. I'll show you around.

Mr Bradley: Wonderful place. Their hockey teams are too good.

Mrs Sahas: Even 10 years ago, you could see when you were walking on King Street the local constable just walking around and shaking the doors in the stores to see whether they were locked. It was a quaint activity that would take place at night, but it gives you an idea of how the place has changed, how our community has changed.

It certainly has almost doubled in size in the past 20, 23 years. There are a lot more of us, so even policing a larger group—most people who don't live in our region think of Kitchener-Waterloo as rural. We're certainly not that. We're a big city and we have all the problems of a big city. Our community is also becoming more multicultural. There's a lot more diversity. Most people used to think of Kitchener-Waterloo as a German town, but you are more likely to hear Vietnamese or Spanish spoken in the street. That also brings new challenges to our police services.

Mr Bradley: I see you were executive director of the Kitchener-Waterloo Multicultural Centre from 1990 to now. You would get a better perspective than some on some of the new challenges facing us. What do you think a police force can do today to deal with those challenges you see? At the multicultural centre I know you normally deal not only with people who have been here for some time but a lot of work is done with recent immigrants, whether they be refugees—you work hard with refugees who come in—or other immigrants who come in and desire your services. What do you think the police services board could do to meet some of the challenges you see out there?

Mrs Sahas: One thing the police services can do is to continue to encourage the police to become involved in learning about policing an increasingly multicultural society; to give all the support possible to the police to do this; to encourage training where training is available, and to encourage partnerships in the community. I could tell you of several partnerships in the community where we can do a lot of this training in a far more painless way than in other communities, and a lot more cheaply, too.

1430

Mr Bradley: Certainly all governments are looking for those things, as efficient as possible and as effective as possible.

There are certain issues that police forces deal with today because they're more in the open than they were a generation ago. One of them is family violence, particularly, if I could narrow it even further, violence against women. A dozen years ago, there was less heard about it; it was kept under wraps even at home. Many women would not want to talk about it because it was somehow considered to be shameful. Today that's different, fortunately. We're seeing those changes. Police forces are working hard to do it now, but how can they better address those needs of family violence? How should a police force be dealing with that?

Mrs Sahas: Before I tell you what things we could do together to address those problems, I would like to say that we all have to be careful that we don't put all the onus of solving the social problems of a community on the police force.

Mr Bradley: Good comment.

Mrs Sahas: They're there to police, and that is an extremely complicated and sophisticated task in today's world. We have to let them do that job and then expand to do other things. There has to be a lot more community support. My own experience in Kitchener-Waterloo, and that's the area I'd rather speak to, because that's where I live, is that there is an enormously successful network of family violence prevention and education systems. I'm very pleased to participate in it, and I'm very pleased to report that the police are at the forefront of participation in that network. We meet at least once a month, and there are a lot of things happening in that area. It's often the police department carrying the ball, quite literally. It's very nice to see.

Mr Curling: I like your approach and the comment you made a while ago that too often we try to have the police solve all the social problems. But there's a concern in regard to the police. I want you to give me an update about what progress they are making with regard to employment equity. Do you think they are making good progress, or do you think they could be more assertive about it? What is the status there now?

Mrs Sahas: The status there, as everywhere else, has to be looked at from the point of view that if there's nobody retiring or leaving and we're replacing people based on attrition only, it's difficult to do.

Having said that, my own experience with our local police services dates back many years. In 1990, for example, I participated and led race relations and equity training with the police department. It took 17 weeks. I was working with one platoon per week, about 30 people per week, over a 17-week period. My impression there was that the people at the supervisory level were 100% in favour of employment equity, in spite of the fact that it's going to bring all the ordinary problems people can invent or can say about it.

When the people at the bottom perceive the people at the top as backing something, and research, especially in equity and in race relations, has proven this time and again, when I perceive my supervisors as backing something and being in favour of it, it's a lot easier for me to start understanding it myself and backing it. That is my general answer.

I'm pleased to know personally a good number of police officers from minority backgrounds, black, Chinese. We hired—I say “we” because I live there—our first Laotian police constable not long ago, and there are a number of Indian men as well. We could have more women, definitely, but again, this takes time. The women we are hiring are extremely competent and feel extremely comfortable with their peers. I think that says something for our community. You could hire a lot of people, but if they don't feel comfortable as officers, it wouldn't be successful.

Mr Curling: You mentioned employment equity being access and coming into the workforce. Sometimes we tend to forget training within the force and sensitivity to the diversity of the community, plus the promotion aspect. Are they doing enough there, do you think, in regard to promotion and training?

Mrs Sahas: One is never doing enough training anywhere, but I think the force is committed to training. As I say, I myself have participated in it on a number of occasions. The training philosophy of at least some of the individuals I know on the force is that it's better to give ongoing training—and they're committed to that—than to pull someone out and say: "You're now going to be trained. By the action of the whole experience we're going to give you eight days of training, and now you will be trained." There is a commitment from what I understand to ongoing training for everybody.

Mr Jackson: Let me say at the outset that I'm very impressed with your responses. I think you bring a necessary perspective to police service boards which we haven't always seen in the appointments so far. That's encouraging.

I do, though, want to pursue a line of questioning which in no way I want you to feel awkward about. Increasingly, I'm seeing in jurisdictions concerns about victimization and that certain groups in society are being victimized. For me, the more I learn about this and the more I respond to it and listen to it, the more I sense that the notion of equity should be that it not necessarily reflect the community—which we would hope wouldn't have the need of a police service, in the ideal community—but that it mirror more closely those who are victimized.

In this area I'm concerned that we have a disproportionate amount of victimization occurring—this can be by gender, by country of origin—and this has an effect on reporting, which anyone will tell you, and I'm sure you're aware of it. Because of your multicultural background and your interests in working with new Canadians, I want to ask you how you feel about assisting a community that's being victimized, which doesn't feel the police services are reflective of their needs simply because they are disproportionately victimized. How do we identify that and how do we help them? This is different from simply just reflecting.

Mrs Sahas: Of course. When you're talking about a segment of the community being victimized, are you referring to a particular visible segment or to the majority, who are starting to feel, "Hey, who's representing me?"

Mr Jackson: For example, there was a CBC Radio show last week which indicated that Asian crime has one of the highest victimization rates because it's targeted to Asian Canadians and that their incidence of reporting is one of the lowest. That concerns me, that they are so fearful of reporting the crime.

For proactive policing to be really proactive policing, we should be trying to determine how we tear down the barrier of fear. Maybe that means keeping statistics, maybe having an Asian crime unit, maybe having more officers who speak a specific language because they are going to meet more victims per se. We know there are disproportionate amounts of victimization, just as there are disproportionate amounts of crime.

The debate to date has been focused on crime. I'm trying to get the debate focused on victimization, because it's the area that I see more and more people expressing

concern about. I just want to get your feel on that from your unique position.

1440

Mrs Sahas: It's an interesting question. I'd like to have more time than just this to think about it and to answer it. It speaks to something I hold very dearly. I think multicultural centres and immigrant settlement organizations and other organizations like the one I'm honoured to direct could play a better role, a more important role in this area. For too long, multicultural centres—let's be frank—have been interested more in folk art, costumes, dances, food.

Mr Jackson: Language.

Mrs Sahas: I can make shish kebabs with the best of them. I'm a member of the Greek community, and we built our church on shish kebabs.

Mr Jackson: We built our church on perogies, so you know.

Mrs Sahas: Okay. I think it's about time for us to spend more time educating our own communities on what our rights are in this new country. Specifically, my own definition of multiculturalism has to do more with removing the barriers that prevent full participation in Canadian life. If we did our job from that perspective of removing the barriers, maybe one of those barriers is being afraid of what the consequences might be of reporting crime to the police. The short answer is education.

Mr Jackson: In the CBC documentary, of the three people who were on, the one thing everybody could agree on was that issue, that leaders of cultural communities should be speaking out against crime as it is targeted and directed against their community. They seem hemmed in, not able to respond, because it's misinterpreted, yet what's needed is for those leaders to speak out.

Your last point deals with a controversial issue which has emerged in the media, the suggestion of possible differential treatment for domestic violence based on country of origin; that this was a cultural understanding, that violence in a family meant one thing in one country of origin and it means something different under our laws.

I'm sure you've been familiar with some commentaries that have come out from the National Action Committee on the Status of Women and others. We've had various police officers respond to say that they feel that no one group in society is inherently violent, which I agree with. I think this is something that police services boards are going to have to grapple with, because there are some within the multicultural community who are arguing that their crimes should be treated differently: "If we were at home, we would be literally selling our daughter's marital rights to somebody. We would be choosing their spouse. We would be determining the age at which it is acceptable to marry." Those kinds of things are not necessarily immediately transferred to our culture with open arms but they're carried with these people.

Mrs Sahas: And it takes a long time. The first thing that an immigrant chooses when he comes to a new culture is the material things. We'll buy the microwave,

perhaps, and the French provincial furniture long before we absorb certain cultural expectations of this new world. That happens. It would happen to us if we moved to India.

Mr Jackson: But my question to you has to do with your training that you are currently doing and your position on a police services board, where the board officers are coming forward and saying, "What are we supposed to do in these situations on domestic violence?"

Mrs Sahas: My response is that if it is against the law in this country, it is against the law in this country, and it is this country we're dealing with. Sensitive though I may be and a trainer though I may be, if a man is speeding he has to be stopped, and it's not enough to say, "I don't speak English." That would be a comparable situation again. We cannot say that because he doesn't speak English he doesn't know that he was speeding, and it's the same thing with other things. If it is the law, it is the law.

Now, how we treat the criminal is different. The presumption of innocence, the fact that he has to be treated with respect, the fact that undue violence should not be used, that's one thing, regardless of whether he's black or polka dot. The other thing, that's different.

Mr Jackson: Thank you very much. Mr Chairman, I think this is one of the finest police board appointments we've had in a long time.

Mr Curling: Hear, hear.

Mr Robert Frankford (Scarborough East): It sounds as though a lot has been done in Waterloo and that there's a lot of sensitivity to the multicultural community before you're there. Do you have any other particular things you would like to be promoting as a member of the police board?

Mrs Sahas: Yes, I would. It's something that's already a minor triumph of ours, of our own particular office, but I'd like to share it with you because it's something you might want to ask questions of other nominees in the future.

Interpreters who work for the police department in just about any city in Ontario receive no training of any kind; they are only checked to see whether they're fit for human consumption, essentially; we check to see whether they have a police record or not. And yet—let's say it's a case of family violence—no matter how much I train the interpreters we work with at the multicultural centre, the police interpreter, the first interpreter who goes to a domestic dispute, to a call, is an untrained person who simply may speak both languages and who doesn't know about confidentiality, who doesn't understand wife assault issues, doesn't understand about the presumption of innocence even, or anything like that.

One minor example—I know we're running out of time—is that I recently interviewed an interpreter who wanted to work for us, and he said to me, "I've been working for the police in such-and-such a city and I was very, very good." I asked, "Give me some examples of why you are very, very good." He said, "I could always get the criminal to confess." "Tell me, how did you manage that? We should bottle it. I'd like to patent it."

He said: "I would tell them"—this gentleman was from a southeast Asian country, let us say—"especially if it's a woman, 'You'd better tell the truth because otherwise they're going to take you in that room and shave your head.' So right away the woman would confess."

I mentioned this to a friend of mine who is a police officer in that particular city, and he was flabbergasted, he was astonished. We have to do something about training our police officers. In our own city, in Kitchener, we're going to be doing it at no cost to the police. Maybe we can talk about that later on, some other time, but it's really quite an exciting opportunity we have here.

Mr Frankford: I was wondering when you were talking about that, is it most appropriate that those interpreters should be part of the police? Since one might be getting into the judicial system and the rights of the accused and fairness, should they perhaps be working for a legal clinic or for you or for some other—

Mrs Sahas: They could, yes. Right now they're freelance interpreters, as interpreters just about anywhere in the province. The point is that we pay them, and we pay them a good wage, actually, not a bad wage, so we have the right to demand a quality of service, and we're finally, in this province, in a position to make that kind of requirement. The Ministry of Citizenship has some excellent initiatives, and if we start coordinating more what is happening we will get quite far.

Mr Frankford: Have you given any more thought to the question of crime statistics, which are often thought to be only about the status of criminals, but I think can also quite usefully be statistics on the victims?

Mrs Sahas: Unfortunately, I have not. I'm not aware of the statistics in our community. I often do see the victims of crime in our own organization. I don't want this to stay only to working with minorities—I mean, that's what I do—but there's a lot more we have to do with that. Even in the case of a violent man who abuses his wife, if you ask me, they're both victims.

1450

Mr Hope: First of all, I'd like to say happy birthday.

Mrs Sahas: Thank you.

Mr Hope: Second, as I was listening very closely to your answers, you're sounding very confident about what you say. I'm surprised that back in 1986 and 1989 you didn't take an active role in the police services board then. The legislative research document says the Kitchener-Waterloo police force has been very progressive, and I thought we would have had the model police force in place by that time. You do reflect a lot of things I hear coming from a number of community groups. I just want to say that what I've heard today is going to be an extra asset to the Kitchener-Waterloo police services board.

There's something I'd like to get into. How familiar are you with the Freedom of Information and Protection of Privacy Act?

Mrs Sahas: Not very, but let's try something.

Mr Hope: I'll just stay away from it, if you're not. It was just a matter of opinion I was curious about, if you were.

Mr Bradley was trying to find out political relationships when dealing with public appointments.

Mr Bradley: Not in all. Not interested, in this case.

Mr Hope: You're not interested, in this case. Want me to ask the question?

Mr Bradley: No, because it's a non-partisan appointment.

Mr Hope: You talk about the relationship of police officers in the community, the confidentiality. You've really said an ideal police force. I have to ask whether in your opinion a police officer should be allowed to participate in politics.

Mrs Sahas: It's an interesting question. I have thought about that for a long time. I don't think I have an answer that's etched in stone. I believe police officers are human beings and citizens and, as such, we shouldn't disfranchise them. They still have the vote. I'm not sure we should say, "No, they cannot run." Enormous care has to be exercised, however, perhaps in whom we hire, first of all. Enormous care and wisdom has to be exercised by a police officer regarding what kind of statements he is making or what kinds of political alliances he might be taking. You're all politicians and you know that once in a while—

Mr Hope: I'm a statesman. They're politicians.

Mrs Sahas: We all understand that alliances have to be made and that a policeman has to remain free from owing anything to anybody. In that sense, the jury's not out on that yet, but I support the province's leadership in that so far.

Mr Hansen: Down in Niagara, we have a problem with the police budget. I would like to know from you what your priorities would be, maybe what could possibly be cut from policing. One statement came out in Niagara that to solve the budget problem, lay off 140 officers, just as an example. What would your priorities be on the police commission? I heard some of your community priorities, but what would you be your main three priorities that you wouldn't cut?

Mrs Sahas: I wouldn't cut down on training, and I wouldn't cut down on the tools, whatever they may be, that a police officer needs to do his duty to the community. The third one—I'm almost tempted to say invite me in six or eight months to come back and tell you what the other one would be, in that I haven't been on the commission yet and I'm not sure that I know everything, so I would be speaking perhaps unwisely.

But on those two things especially I would not want to compromise: all the training that a police officer needs—and when I say a police officer, I mean everyone in the police—and all the tools that are needed. We cannot tie people's hands behind their back and then say, "Go and police."

Mr Bradley: Hear, hear.

Mrs Sahas: As with every bureaucracy—I know because I manage a centre, and when I write my budget, I put office supplies. Hey, I have an enormous office supply budget because there's one way I can play with the budget, by having that. I think we all have frills of

that nature in any budget where that's how we can protect ourselves from cuts. I'd like to go and see what those are before I give you the third answer. Come visit me in six months and maybe we can talk some more.

Mr Hansen: It's a very important part of the job.

Mrs Sahas: Yes, it is.

Mr Hansen: Not being there yet, I guess it's a little difficult. But you read in the paper what's been going on in past budgets, or you might be taking a look at the upcoming year, and I thought maybe you had some thoughts on that. With a brother in the Niagara Regional Police and myself being on a police force, I've always been one to support the police in a lot of their endeavours. The type of training you're talking about is ongoing, not that you get a whole lot of training at the beginning and forget about the training continuing. It's very important that that officer out on the street, and I think this is what you're saying, is trained in how to handle different situations.

What do you think about the new semiautomatic guns that have been awarded to the OPP and, later on, to the other police in Ontario?

Mr Bradley: I never thought I'd see an NDP government do that.

Mrs Sahas: I just hope they don't issue me one, okay? I'm a very non-violent person, but you never know what I might do with one.

What we hear is that they're safer, and we'll have to try it, like any piece of technology. Sometimes with toys, we get a little silly maybe sometimes, too quickly. But if it's going to make it safer for the police officers in my community, I'm willing to give it a try. That's what I know so far. Again, I'm giving you semi-ignorant responses because I don't know exactly all of what I might get a chance to learn next year.

The Vice-Chair: Thank you very much for appearing before the committee. We wish you well.

Mrs Sahas: It was a pleasure. Thank you.

DONNA LAILEY

Review of intended appointment, selected by government party: Donna Lailey, intended appointee as member, Agricultural Research Institute of Ontario.

The Vice-Chair: Good afternoon. Have a seat in the front, please. You have the opportunity to make an opening statement if you wish. If not, we'll proceed with questions.

Ms Donna Lailey: I do not wish to make an opening statement. I'd like to thank everyone for giving me this opportunity, and I hope I'll be able to answer the questions you wish to ask.

Mr Bradley: I should tell you, Mr Chairman, that we have a member of royalty before us today, a former Grape King.

Interjections: Queen.

Mr Bradley: No. It's called Grape King.

Ms Lailey: I'll talk with him later.

Mr Hansen: Welcome to the committee. Mr Bradley said "Grape King," but you're the Grape Queen.

Mr Bradley: She was king and queen both.

Mr Hansen: I thought Helen Lenko was Grape Queen with her husband the one year, shared the title. Anyhow, glad to see you here.

Being appointed to the Agricultural Research Institute of Ontario, what do you think you can bring forward, maybe your current area of research or other areas of research that have to be done in Ontario in the agricultural field? Can you tell me why we should be looking at you as a member?

Ms Lailey: I don't know why you should be looking at me, but I have lots of strong feelings towards research in agriculture. If we're going to compete on a global scale on a level playing field, a lot of research has to be done and it has to be done on all commodities, not just in my field. A lot of it is competitiveness in these fields, whether it be in pesticides, whether it be economically, whether it be environmental. We have to compete at all levels, and without research we will not be able to.

Mr Hansen: Do you feel we should spend more money on some of the winners we have out there? I know you were taking a general effort to take a look at everything, but—

Ms Lailey: I don't even think it's necessary to spend money. The thing I've learned so far, since being involved with the research—I was in Guelph for three days and I was so impressed with what has happened in research so far at the Guelph university level and what they're doing.

If I recall, research in the past has been done—I can give you examples. For instance, there was someone in the province doing research on plums for six years, and by the time the research is done, the plums are out of the ground. With this new policy that's in place, the way I understand it anyway, we have professors working on a project, and if it becomes obsolete or not necessary any more, he can be taken from there and put in another field and he's not locked in. There's the freedom to go from one commodity to another, which I find really exciting. I think in the long run, in terms of money, it will be cheaper to do research.

1500

Mr Hansen: Do you actually see the institute playing a broader, more public educational role aimed at the consumer? How might this be accomplished? Not just the research, but how to get the product out there to the consumer. Consumer research, not just cultivating and insecticides etc. Do you feel this is part of the institute?

Ms Lailey: I definitely do. I do, because the farmers I know involved in farming communities—farmers like to farm. They don't like to market. We have to get our farmers in tune with what is happening in the marketplace, to make them think: This has to be presented in this way; this has to be cleaned in this way. It's a mindset in the farmer, and I think that takes research and education to get our farmers on line in that respect.

I can give you an example of that. At the moment, with the help of the Ontario government, we're doing research with Vision Niagara on the hospitality industry, why they don't serve or whether they are serving Ontario

products in their restaurants. We want to know why and how, and if not, can we make it easier? Then we're going to interview farmers to see if they are willing to go to that market and look after that market. I have a feeling that where we're going to find our biggest problem is in that field, because farmers do not think as marketers.

In my business, which is the grape and wine industry, it's a different story. I think we've done a marvellous job—with the help of government, mind you—in marketing of our wines in Ontario.

I went to California not too long ago on grape tech and wine tech. The people involved in the wine marketing aspect were disappointed in what they experienced, but the people who did the grape tech were disappointed that the research going on in the grape aspect of it was horrendous compared to what's happening here. The marketing people thought they could cope quite nicely, given the amount of money the California grape industry has, I suppose, but even without that, they felt what they were doing in marketing was quite positive compared to the research that needs to go on in the agricultural.

Mr Hansen: Coming out of Niagara, you would be associated with quite a few of the other commodities, the plums, the peaches, the grapes, the apples, the vegetables and everything else. You have a good knowledge of the total food basket of Ontario in this particular area.

Ms Lailey: Yes, I do.

Mr Hope: I was looking at your résumé, the specific area you have an interest in, and you've also been part of the teaching profession around school and education. As we talk about agricultural research, we have to talk about education of our young children so they understand where the cob of corn they find on the grocery shelf comes from, or the tomato they find on the grocery shelf, or the package of chicken in the freezer.

You started talking about the marketplace, and that's all great. I've heard since 1980 that farmers have been talking about the marketplace, and what I've heard farmers say is that we need farm-gate pricing before we can actually get our work above minimum-wage standards.

But I want to talk right now about the users of a product, the consumer. We have to inform them about technology, what it actually costs to produce food. I'm wondering about your views on reaching our young people, to have appreciation for our agricultural products, from beef to pork to normal vegetables.

Ms Lailey: You mean to think Canadian?

Mr Hope: Yes. Ontario, preferably.

Ms Lailey: Maybe you don't want me to talk about marketing, but it is a marketing process to make people believe in what we do, that the peach we grow is as good as the peach from Georgia, for instance. I think it comes from believing in what we're doing and bringing our children up with this kind of thinking and education. It has to happen in our schools and it has to happen in our homes, and it isn't happening. At the moment it comes down to dollars and cents and, can we compete in that area?

I've been with a man who's doing beef and turkey. He

grows it, he processes it, he sells it, he does everything. He has gone to conferences in the United States, and he comes back so excited because he says we can compete, compete easily with the wage and so on. I came back from Napa Valley where it's \$55,000 an acre to bring in an acre of grapes; \$15 an hour for labour is what we're told.

We can compete. It's the mindset out there, I think. And we have to be honest about this: We have things they don't have, but we also—and to get the positive approach through to the public about what we're doing and that we can be strong and do it. We can do things in the grape and wine industry that they would love to have in California. They would love to have my Chardonnay in California, because it's a balanced product; it has acid.

Mr Hope: One of the things is the chemicals being used in the United States versus the chemicals we use here in the Ontario, plus the environmental aspects. I'm wondering about your opinion about agriculture and the environment and their relationship.

Ms Lailey: It plays a big part in society. In the last five years, just on my own farm, I have cut my pesticides probably in half. I spray no insecticides. I use pheromones in my vineyard.

It's sort of like the Coalition for Responsible Drinking, which I serve on; the people are making the big issue the harmful use of alcohol. It's the same as the harmful use of pesticides, but we in agriculture probably know better what goes on those things than anybody else in government or anyone else in the community. If you asked a farmer about his spray program in the last five years, the decrease—he's very much aware of the spray business. But there is a place where research needs to be done badly. I was so impressed with the area in California where they were going to grow cover crops in their vineyards so it would attract the biggest pest they have in their vineyard to the grasses or whatever they were growing. That is the sort of research we need.

You brought up the idea of the chemicals that come in on food from other countries. This is an issue you've all dealt with. We are not allowed to spray those chemicals, but we're all allowed to consume them, which doesn't make a lot of sense to me. Either it's free for everybody to use them or we don't allow any that have these sprays on them coming into this country.

Mr Hope: I would have asked your opinion about the NAFTA agreement over chemicals, but I don't have enough time.

Mr Cleary: If you don't mind, I'll call you Donna, because that's a familiar name in my household.

Ms Lailey: Sure.

Mr Cleary: Reading through the material I have in front of me, you say you have a 20-acre grape farm, and then you said the man you work with—is he into the beef and turkey?

Ms Lailey: I don't work with him. He's a man I met on the research board just last week. I spoke with him and we were comparing notes and wondering if we could compete in a global market in agriculture in Ontario. That is what we were discussing. He felt and I felt very

strongly that we could.

1510

Mr Cleary: I know you people have gone through tough times in your area, but I understand everything is under control and going well now.

Reading this, I wasn't sure whether you were into the wine or just the juice. It's the wine you're into?

Ms Lailey: I get into wine sometimes. What I do is I process grapes and sell juice, wine juice, to home wine makers who enter competition. This may open another can of worms right here.

Mr Cleary: We could talk about some of that.

Ms Lailey: I'd like to talk about it, if we could.

Mr Cleary: Some of the things I'm going to ask you have been partially answered before. What do you think the Agricultural Research Institute of Ontario should focus on, and what would be your priorities?

Ms Lailey: I know down the road, and it's not very far, the environmental issues are going to be a prime concern, but competitiveness has to be addressed. Politicians must get sick and tired of listening to farmers say they're no longer viable. We've dealt with several commodities from my area, searched it high and low, and if we cannot compete in that commodity, maybe we have to substitute another commodity in that area if we wish to keep that lovely green belt around the Golden Horseshoe. Maybe we can't grow peaches, if we cannot be viable and competitive.

Mr Cleary: You mentioned advertising and being competitive. One thing I think we all see now is the way they're promoting New Zealand lamb. I understand we're having a problem because there are companies that want to buy a thousand all the same size, for Easter, and we can't do that. They say we can't, but I think we can. That's a big issue now, and I just wanted to mention that.

The other thing we hear a lot about with respect to competitiveness from our farmers, from different commodity groups, is the minimum wage. Do you have any views on that? I live on the border of another province, and I know its minimum wage is somewhat different from ours and it would give that other province a bit of an edge. Would you care to comment on that?

Ms Lailey: Everyone in rural Ontario needs to have a living. I really feel strongly that if they work on farms, they need a living. This is where we come down to competitiveness again, because if a farmer is not viable, he cannot pay more, but if he's viable, it's not difficult for him to pay a minimum wage or \$10 or \$20 an hour or whatever.

I feel it has to come through research. If we can produce more for less, we can pay more for the people who work for us. I feel very strongly that, for the people who work for me, if I had to go home and feed four children on less than minimum wage, you just can't do it. Another part of our research board is keeping rural Ontario viable, not just the farmers, and we are looking into the studies of that at the moment in the ARIIO.

Mr Cleary: This has been touched on a bit before, but I want to ask you again. I had an interview the other

day, and the one who was interviewing me had to ask me three times before I answered properly.

The Vice-Chair: Until you gave them an answer they wanted to hear.

Mr Cleary: It was on an issue I would sooner not talk about anyway.

Do you feel competitiveness might be compromised by the environmental standards and regulations? I know my colleague touched on it.

Ms Lailey: Do you mean, in order for us to go competitive, we will sacrifice environmental issues?

Mr Cleary: Right.

Ms Lailey: I don't think we can. There's another thing along this line. I met with some federal people the other day and we were talking about this competitiveness issue. My concern and my question to him—we go into negotiations, as a marketing board, with the farmers and the producers. We spend three days negotiating the price of grapes, when 63% of that price is tax and there's only a very little bit for us to negotiate. I may be off topic here, but this is an issue where we have to be, in my field, competitive in that range.

I've lost my train of thought. I think I got off topic. What was your original question?

Mr Cleary: My original question was on the environmental issues.

Ms Lailey: Oh, yes, getting back to the federal government. We asked him if he could send us info on maintaining a level playing field, on what happens in pesticides in France, Germany. What do they give their farmers, what support payments? These are issues we would like to have. We've tried and tried to get this information from different areas, as a marketing board. If anybody here has any info on that, it would certainly help us to develop our agriculture field in the wine business.

Mr Bradley: I want to ask a thousand questions, but our time is limited. The question I'll choose is intensive farming.

We are requiring, as a society, of our farmers that they be extremely competitive, that they produce a lot to compete with everybody else. The result is that in many cases there has been a lot of use of pesticides and, second, there is very intensive use of the soils. Do you see further research into the effect of this intensification of farming on the soils in any particular area? It is alleged by some that as we force farmers to be more competitive, to produce more, in fact we are having a detrimental effect on soils.

Ms Lailey: This is an interesting thing we were told last week, which was a positive for me: the research that has gone on in soybeans or corn, either one. With the technology they have, they can go over a field and, if you have a 100-acre field, see the amount of corn that came off this area, the amount that didn't come off this area, why it didn't and so on. Maybe this part wasn't planted another time because it was too low or too high, or I don't know what. With the technology we have, rather than planting a whole field and then averaging, which is what we always do, now we may be capitalizing on

smaller areas, preventing erosion on hills, whatever.

There's a lot of space for research in that area, not necessarily expanding size but that what we do, we do well and increase the volume. Maybe we don't get more. Say I continue to get 100 tonnes of grapes every year, but maybe I'm only going to use half the land. To me that is real progress, because we are reserving land and maybe we can plant cover crops to offset and all kinds of things. That's the sort of thing where there's a lot of space for research.

1520

Mr Sterling: I'm interested in your appointment, and I think you'll make an excellent member of the institute. I look at their budget for 1992-93 and it shows a budget of \$45 million. Some \$28 million of that is to the University of Guelph. Does that all come from OMAF?

Ms Lailey: I just went through all of that. A lot of it comes from OMAF, but there's also the university side that comes in to support some of that. I don't know the percentage, but OMAF does put an awful lot of research money in.

Mr Sterling: This institute was created in 1962. I'm always a little suspicious of old institutions, in some ways, in terms of whether they've outlived their usefulness and can be replaced or done with something more efficient or better or whatever. Having been involved very much in governance issues at our federal-provincial level and very interested in the outcome of our country and the future, I've always thought research functions would be better handled at the federal level. If you have a federal government, you've got to have something for it to do. It seems to me to make sense that for health, for pesticides, chemicals, for research, we'd probably be better to centre that in a federal government, because what's good for a chicken in Ontario is good for a chicken in Quebec or whatever.

Ms Lailey: I'd be terrified to let that happen, because we would be dealing with wheat, I know that, would be doing great research, but the wine industry? There are only two places in Canada that we can grow tender fruit. If the federal government were responsible for this—you probably know an awful lot more about it than I, but being part of Ontario, I feel you would be more concerned about what's happening to your food base in Ontario.

Mr Sterling: I just worry that there's a possibility of duplication with the federal government, a possibility of duplication with other provinces that have agricultural industries as well. What do you do to avoid that now?

Ms Lailey: That's a good question. I am really aware of that also, especially with what's happening now, when money is short so we're cutting back. But then there's this disbursement of funds to do research, these little Band-Aid approaches that we're doing to find out. I said to the man from the federal government the other day: "How often do you meet with the provincial government? I am sure there's a project going on right now in this very area." He said, "We're meeting next week." But that is a real concern of mine too.

I also think it was a positive happening when I listened

to the professors at Guelph last weekend telling us how they have revamped their program. In the past, as I explained before, we just had isolated pockets that went on and on and on and just sucked in money and energy and nothing really ever came out.

The other project that needs to be addressed and researched, from my point of view, is that these people may do the research, but do they ever get it to the source? I know they have done research in the Vineland research station for years and years and years, but to try to get that so that it's functional on my farm is not an easy task.

Mr Sterling: I have a nephew who has worked in Agriculture Canada for some time. He was telling me that part of the problem is that the work Agriculture Canada is doing, the money our taxpayers are spending there, is under attack as soon as there is a cut because they are not close enough to the producer and in some cases their work is on a long-term basis. It's sort of a two-edged sword. I don't know the answer, but what I'm saying is that I think that Agriculture Canada and the research institute and all the other research establishments in other provinces should be singing from the same hymn book.

Ms Lailey: I think it's going to happen.

Mr Sterling: I don't know how best to do this. I know there's been more faith in the past in provincial control of programs because they've been able to deliver them better, but you still have to think about this other part. I mean, \$45 million is not a small piece of change. We have to be concerned that we're getting our best bang for the dollars.

Ms Lailey: I understand what you're saying. It's very—

Mr Sterling: The federal guys are getting cut off because you are the people who are liaising directly with the agricultural industry, so you have the federal people who are not getting to the bottom because we're under-cutting them. I don't know.

Mr Chairman, you're from an agricultural community. Would you like to ask a question or two? I'm sure you have some.

The Vice-Chair: I have a couple.

Mr Sterling: I'll give you a bit of our time, as you're from our caucus.

The Vice-Chair: The Chairman doesn't very often get the opportunity, but sometimes it is a prerogative when you're the Chair that you can ask the odd question or two.

I'd like to ask you about insecticides. It's a very important part of growing our products today. I heard you say you've cut yours by half. Would that be a sample of what's going on in the region, that they are cutting back on their insecticides?

Ms Lailey: Farmers are more aware, mainly because of everything we read and hear and see. The publication from the Ontario department of agriculture has certainly emphasized that. I've been farming for 25 years and I know farmers looked at that book as if it were the gospel. If it said, "Spray every 10 days," they sprayed; whether or not there was anything out there, they sprayed. But that whole thinking has changed, and that was brought about because people have done research and, "Maybe we don't have to spray when there are no insects or there's no fungus."

The Vice-Chair: I farmed for 30 years and never sprayed.

When you were in the Napa Valley, did you visit Sam Sebastian's vineyard?

Ms Lailey: Yes, I did.

The Vice-Chair: Good samples there, aren't there?

Ms Lailey: There are good samples, but there are a lot better in other places.

The Vice-Chair: I want to thank you for coming before the committee. I think you'd make an excellent candidate in the riding of Lincoln in the future. Thank you very much for attending.

Mr Hansen: Thanks, Al.

Ms Lailey: Thank you.

The Vice-Chair: That concludes our review of the intended appointees, if you would like to do them in one motion to concur.

Mr Waters: So moved.

The Vice-Chair: No opposition to having them done in one motion? Seeing none, everyone in favour? Carried.

The committee is adjourned, and the subcommittee will meet right now.

The committee adjourned at 1528.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Chair / Présidente: Marland, Margaret (Mississauga South/-Sud PC)

***Vice-Chair / Vice-Président:** McLean, Allan K. (Simcoe East/-Est PC)

***Bradley, James J.** (St Catharines L)

Carter, Jenny (Peterborough ND)

***Cleary, John C.** (Cornwall L)

***Curling, Alvin** (Scarborough North/-Nord L)

***Frankford, Robert** (Scarborough East/-Est ND)

Harrington, Margaret H. (Niagara Falls ND)

Mammoliti, George (Yorkview ND)

Marchese, Rosario (Fort York ND)

***Waters, Daniel** (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)

Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Abel, Donald (Wentworth North/-Nord ND) for Ms Harrington

Hansen, Ron (Lincoln ND) for Ms Carter

Hope, Randy R. (Chatham-Kent ND) for Mr Mammoliti

Jackson, Cameron (Burlington South/-Sud PC) for Mrs Marland

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
for Mr Marchese

MacKinnon, Ellen (Lambton ND) for Mr Frankford

Sterling, Norman W. (Carleton PC) for Mrs Witmer

Clerk / Greffière: Mellor, Lynn

Staff / Personnel: Pond, David, research officer, Legislative Research Service

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of Ontario**

Third Session, 35th Parliament

**Assemblée législative
de l'Ontario**

Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 16 February 1994

**Journal
des débats
(Hansard)**

Mercredi 16 février 1994

**Standing committee on
government agencies**

**Comité permanent des
organismes gouvernementaux**

Intended appointments

Nominations prévues



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STANDING COMMITTEE ON GOVERNMENT AGENCIES

Wednesday 16 February 1994

The committee met at 1006 in the Trent Room, Macdonald Block, Toronto.

INTENDED APPOINTMENTS

RAYMOND CHENG

Review of intended appointment, selected by government party: Raymond Cheng, intended appointee as board member, Clarke Institute of Psychiatry.

The Vice-Chair (Mr Allan K. McLean): I call the government agencies committee to order. Today we're doing a review of Raymond Cheng, intended appointee to the Clarke Institute of Psychiatry. Mr Cheng, please take a seat at the front. You have the opportunity to make an opening statement if you want to, or we can go right into questions. The choice will be yours, sir. You'd like us to go right into questions? We will do that.

Mr Robert Frankford (Scarborough East): I think our paths have crossed slightly, because you've been connected with the Scarborough mental health coordinating committee. Could you say something about what you see you can contribute to the Clarke?

Mr Raymond Cheng: I can see that there are three roles I can play on the board of the Clarke. The first, of course, is that as a board member, it would be a continuing educational experience for myself and also for the other board members, because when you're in a board environment, you have pretty diverse groups of people and you kind of learn and understand from each other's perspective.

The second thing I would bring to the Clarke is community linkage. Traditionally, hospital-based institutions have not really worked as hard as they could to establish a reporting relationship with the people they serve. Also, community organizations have to become more coordinated and communicate with each other to make the best use of the available financial resources within the health system. The Clarke needs to articulate what it's doing and share those understandings and create agreements and linkages with other agencies so they know what it's doing and they're not going to duplicate resources.

The third thing is that the Clarke could benefit from a different voice, a voice that is representative of the increasing diversity of the population in Ontario and specifically in Metro Toronto. By having somebody who is a visible minority, I could bring a perspective about the southeast Asian community to the Clarke. When you do that, you make things more aware within the system, and the system can understand and try to enhance the way it provides services to the population.

Mr Frankford: Could you briefly give us any views on mental illness in the southeast Asian community and any differences you've noticed from the mainstream population?

Mr Cheng: In the mainstream, mental health is pretty well-defined and is given definitions based on traditional

perspectives. In the southeast Asian community, mental illness is seen as a reflection of the whole individual. For good or bad, that does create an amount of stigma that makes it difficult for people in the community to access traditional services. We also have the problem that if you don't speak the language and you're dealing with service providers who do not understand the culture, where you're coming from, you are going to have a lot of difficulties in attempting to deal with mental health in a traditional way.

Mr Daniel Waters (Muskoka-Georgian Bay): How did you get here? What was the process? Were you contacted by somebody in the government? I believe, actually, there is a system within Clarke, the institute itself, but I'm not sure how that works.

Mr Cheng: From what I understand, I was nominated by someone who was already serving on the board of the Clarke. I was asked if I was interested in being on the board and I said I was interested. That's pretty much what the process has been. There has been no outside process, other than the fact that I knew the person on the board of the Clarke and she asked me if I wanted to be on the board. That's the nature of the nomination.

Mr Waters: That was the candidate-search process. You work with Hong Fook Mental Health Service. How would that work with your sitting on the board? You've been there for 10 years now.

Mr Cheng: Hong Fook Mental Health Service is an ethnoracial agency that provides mental health services to Chinese, Cambodian and Vietnamese consumers. The links Hong Fook has with the Clarke are in the nature of research. There is a great interest in the Clarke right now in doing cross-cultural research. In other words, let's take our traditional mental health model and see if this works or does not work with other cultures. So there's an amount of interaction going on there. As a matter of fact, Hong Fook sponsored a conference in 1992 called Desire to Connect, and several of the speakers came from the Clarke to do that.

In terms of what Hong Fook does with the Clarke, I don't think you should just look at that working association and the Clarke as being what really defines why I would be asked to join the Clarke. I have other volunteer work and other associations which interact with the Clarke and which I think has been recognized. Furthermore, I think the Clarke is really interested in reaching out and getting a board member who has these types of community linkages and someone who has the ability to indicate how they could go about improving those linkages.

Mr Waters: I'd asked for a few facts about the Clarke, and I was fascinated when I read some of the things because I had never thought of the Clarke covering such a wide variety of things; you think of it as being solely one thing. Looking at your CV, you really do fit in

in terms of the drugs and the hearing groups as well as your commitment to mental health. I congratulate you, and I think you'll be a fine member of the board.

Mr John C. Cleary (Cornwall): I guess everyone who's appointed to a board or commission has some objectives in mind, and I was just wondering what yours are, your goals and objectives for serving on the board. You must have something in mind that you'd like to see changed.

Mr Cheng: It's a very good position to continue to learn. I regard my life as being a continual educational process, and being on the board will provide extremely good tuition at a very reasonable price.

In terms of my goals and objectives, I would like to take this opportunity beyond the learning ability. I think I can help the Clarke to learn to understand where it sits in the mental health system. I can bring feedback as a result of the mental health reform process and my community groups linkages and give them a broader and diverse understanding.

It works two ways. I really think I could learn a lot from the other board members, a lot about how the Clarke operates, and in turn I could give the Clarke the benefit of my complementary knowledge and abilities.

Mr Cameron Jackson (Burlington South): How familiar are you with the current budget for the Clarke and the difficulties it's experiencing?

Mr Cheng: I have attended one board meeting as a guest. I have had a chance to review and look at the financial statements up to the third quarter. Apart from that, it's hard on the basis of one meeting to draw any great inferences on whether the Clarke is in a good financial situation, a bad financial situation, or just an ordinary financial situation.

1020

Mr Jackson: There isn't a single mental health facility in Ontario that's in a good financial position, but it's not their fault. We have increased demand and we're living in a period of funding restraint. Have you had any dialogue with persons at the Clarke or those who are supportive of your application that would indicate to you areas in which the Clarke is looking at ceasing operations or reducing access to program?

Mr Cheng: To answer that, if I step back a little bit and go into my community focus shell, the current mental health reform process is saying that we are going to move from institutional-based care to community-based care. Naturally, the Clarke is an institution, and it will have to deal with the consequences, as they become known, down the line of mental health reform and in what way that would impact on their funding.

At this point, not knowing a lot about the situation at Clarke, I would say the Clarke has to think about what it does best, which is as a teaching hospital, primarily in research and also in clinical care. Those three areas are within the current mandate of the Clarke. If you're going to see downsizing or potential financial restructuring, the Clarke will probably do best by not duplicating the efforts of the community-based system and going into its very own strengths and maintaining those strengths.

Mr Jackson: If I can move you into an area of your strength, the work you're currently doing in the community in linkages with your cultural community, you are assisting mental health patients currently with outpatient programs, community-based programs.

In the room immediately adjacent to this, Parliament is conducting hearings on Bill 120, which deals with a series of issues around housing needs. Virtually every mental health client-based group has come forward to suggest that legislative reforms are going to have a negative impact on program, in concert with accommodation, as it relates to interim or community-based steps to full community living. Are you familiar at all with this legislation, Bill 120, and its implications for persons with mental health problems who require program supports?

Mr Cheng: No, the legislation is not familiar to me. However, within the mental health reform process, there has been a committee, supports and services, which has been working on guidelines related to mental health. Four priorities have been seen as important, and housing is one of those needs, that if you look at things on a much broader level, if you don't have a stable place to live, that will almost certainly impact on your mental health. That is a very basic concept that everybody can agree with.

Mr Jackson: I couldn't agree with you more. The concerns are that clients you're currently assisting require a program component of community-based living; it might be shared accommodation with certain supportive living components, communal meals, that kind of aspect. The government is proposing to extend the rights under the Landlord and Tenant Act to include those persons who might be resident in those facilities or housing units if they are going to be in that facility for more than six months.

This has caused a concern on the part of mental health advocates who support community-based living. There would be certain impediments imposed under the legislation, because they have additional rights under the Landlord and Tenant Act. Most all the groups that have come forward that have expressed this concern and point of view have said it will force the institutional-based facilities to take back in some of these mental health patients who cannot and are not able to work within that program or who reject the program component of it.

As you're involved in that field and since the Clarke Institute does assessments and referrals, this may not surface as a problem you'll have to deal with. You didn't ask for the legislation. You've asked for accommodation with program components as a step to full community living. That's what you've been advocating and that's what we're developing. However, these new rights for tenants have caused some concern for patients and patient providers. I recommend you look into the legislation at least and be aware of it.

The Clarke Institute does extensive and broadly based mental health support service but also is involved with assessment of young offenders and with the assessment of criminal offences prior to sentencing and prior to remanding, correct?

Mr Cheng: I believe that's true.

Mr Jackson: Are you doing anything currently within your cultural community with persons in conflict with the law and mental health? If so, what is the nature of that work?

Mr Cheng: Our sponsoring agency, Hong Fook Mental Health Service, has social workers. These social workers, who speak Chinese or Vietnamese or Cambodian, are capable and often do interpretation and intervention on behalf of clients in all kinds of situations, particularly stressful situations. That's all I can say, basically.

Mr Jackson: You provide interpretative services for corrections facilities, for the police, for court appearances, for a whole series of things?

Mr Cheng: The agency is kind of like a jack of all trades, because it's well known in the community as having clients who are from these ethnic backgrounds and may have difficulty communicating in English. As such, I don't know for certain, I don't have particular facts and figures, but I would say Hong Fook is quite well placed to provide that type of intervention when it's needed, especially on a language level.

The Vice-Chair: Thank you very much for appearing before the committee this morning, Mr Cheng.

1030

SHARI NOVICK

Review of intended appointee, selected by official opposition: Shari Novick, intended appointee as deputy presiding officer, Pay Equity Hearings Tribunal.

The Vice-Chair: Next we have Shari Novick, the intended appointee as a full-time deputy presiding officer, Pay Equity Hearings Tribunal. Good morning. You have the opportunity to have some opening comments, or would you like to go right into questions? The choice is yours.

Ms Shari Novick: No, I'm prepared to answer questions.

Mr Alvin Curling (Scarborough North): You could help me to understand this from the point of view of pay equity. In 1987, as you know, the Liberal government introduced this legislation, followed by amendments to the act by the NDP government. Many criticisms arose on the issue of how it came about.

I'll focus specifically on nurses and hospitals. When there were increases given to nurses, which were of course deserved, what is being seen now is some of the cutbacks: Because hospitals don't generate revenue, to pay nurses more you have to find it from within that budget. This is a very difficult process. Women, who in the past were being denied proper pay, deserve the additional funds, but now it is said that because the government does not flow enough money to the hospitals, it more or less undermines the process itself. Do you have any comments on that?

Ms Novick: I don't know that much can be done about the government's budgetary choices and how that may impact on the legislation and how it's administered. The principles set out in the act are clear, and through the jurisprudence that's evolved, certain approaches have been enshrined, and those would be followed regardless

of the current economic climate or government choices. Other than that, I'm sorry, I don't have much comment on that point.

Mr Curling: Let me put it to you this way. Sitting on the tribunal, if there are laws you see there that, when administered, would not be serving the purpose well, would you be prepared to put forward recommendations that this should be changed because inadequacy exists within the law? There are bad laws and there are good laws, and as you said, it is enshrined. When I hear the word "enshrined," it's like it's cut in granite so we don't cut it any more.

Ms Novick: I'm sorry. Perhaps that was not the most appropriate word to use. Of course, this is quite a new area, and although the jurisprudence is still evolving, certain ideas have been suggested and followed. Of course ideas change and circumstances change, and I think there has to be a fluidity to how laws are interpreted and enforced. I may not know exactly what you're trying to get at, but I wasn't suggesting that approaches that have been taken now are engraved in stone or whatever the term is we use. There has to be a sensitivity to circumstances, but the basic premise of pay equity, as set out in the legislation, should be upheld.

Mr Curling: How do you feel about the fact that pay equity was first introduced as the concept of equal pay for work of equal value, and that has changed considerably? It has changed to gender-specific, really, to give equal pay to women underpaid for jobs traditionally done by men. Do you feel we should be moving to equal pay for work of equal value, regardless of gender?

Ms Novick: I certainly agree with that, and I think the legislation contemplates that. Generally, the scheme that's followed is that employees who are in what's called a female job class should be ensured the same compensation rate as those in what's been identified as a male job class where the work is of comparable value. What happens at times is that there could be men who are performing those jobs in what's been defined as a female job class and they're certainly going to be benefiting from the equalizing of the wage rates. I don't think we single out women, necessarily, although that's the effect of most of the changes that have come about.

But the law doesn't say, "Women now have to be earning as much as men." I think it says, "People who are working in those classes will be earning the same as the comparable classes."

Mr Curling: The legislation emphasizes that it's not because you're a woman that you're going to get paid as a man. It is that in those jobs traditionally done by men, when the study came out, it showed the discrepancy was pretty wide, and we now pay them for the work of equal value.

But my point, and the complaints I'm getting, is that people feel that when pay equity started off, it was on the premise of equal pay for work of equal value, regardless of gender. However, women were seen as being more exploited in that way. I just wanted to hear your view on that.

Are you quite familiar with the pay equity legislation?

One has to be, to be on the tribunal, I presume.

Ms Novick: I would say I am familiar with it. I'm not very familiar with the sections of the act, and you referred to amendments that had been made. I'm really not that familiar with the legislative history.

Perhaps I should say at this point that this appointment to the position on the pay equity tribunal is a cross-appointment for me. I'm already a member of another tribunal and have been for two and a half years: the office of adjudication. We hear appeals under the Employment Standards Act by both employees and employers, and also appeals under the Occupational Health and Safety Act. The reason I'm here is that I've been cross-appointed, as part of a pilot project, among three tribunals within the labour and employment field. So I can't say I'm intimately familiar with the provisions of the Pay Equity Act, but I'm hoping to become so.

Mr James J. Bradley (St Catharines): One of the things that governments have to wrestle with now, and tribunals have to wrestle with, and I guess individual members, is the issue of the ability to pay. People on the labour side of an issue would say arbitrators should be unfettered, should be able to make a ruling, and the employer should accept the consequence of that ruling. Employers try to make the case that we should take into account the ability to pay.

The Premier has chastised publicly arbitrators who have made decisions which have been in favour of labour, in some cases, by saying that the government, or the taxpayer, does not have the ability to pay.

When you are making your rulings, is there any idea whether the government will be requiring that you take into account the employer's ability to pay? If you didn't, I would be afraid the Premier might be critical.

Interjection: We're going to pull out the Hansards on Bill 40.

Mr Curling: I think you rattled the cages over there.

Ms Novick: It's a difficult question to answer. Perhaps I'm naïve, but certainly now when I hear cases and make decisions which often involve large sums of money and it's made quite clear that the employer is unable to pay, it's not something I take into account now.

I am unaware whether, somehow, different pressures are there under the pay equity scheme. I wouldn't think that ability to pay would be one of the factors that comes into it, because I don't think it's set out in the legislation. Again, I'm not entirely familiar with the jurisprudence, but I would say that the scheme as set out is clear, and I think employers who are ordered to make adjustments have to do so, and whatever flows from that, flows from that.

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Mr Jackson: Shari, thank you for saying yes when you were approached to cross-appoint. However, as the chair and vice-chair of this important committee, it's rather unique, as there was to be, at least in the spirit of the legislation, a balance in the appointments between employer and employee groups. Whom do you represent?

Ms Novick: I don't represent any one side.

Mr Jackson: How do you think the government would be classifying you, if asked?

Ms Novick: To be honest, I think it would be difficult for them to classify me.

Mr Jackson: Who's the chair of the Pay Equity Hearings Tribunal?

Ms Novick: I think there's an acting chair now, Mr Palumbo.

Mr Jackson: Is he an employee or employer appointee?

Ms Novick: The tribunal is set up in such a way that there are vice-chairs, or deputy presiding officers I think is the term used in the legislation, and then there are employer sidespeople as well as employee sidespeople, and those are there to provide a perspective from those two communities. The vice-chairs who sit on the panels are neutral and independent and are supposed to be sensitive to the concerns of each side, and perhaps are aided by the perspectives of the sidespeople, and I hope to follow that as well.

Mr Jackson: During your term in the office of adjudicator, what was your most difficult hearing decision?

Ms Novick: Probably the one I'm writing right now, which I shouldn't comment on.

Mr Jackson: Then your second-most difficult one. Are you writing any others at the moment?

Ms Novick: A few, yes.

Mr Jackson: Which one has given you the most difficulty?

Ms Novick: Not commenting on the ones I haven't completed, there have been some. Mostly, the difficulties I've experienced spring from the vague provisions in the Employment Standards Act. There are several that are vague, and you have to try to glean what the Legislature intended, and the meaning is not always so clear.

Problems arise in the mandatory retirement area in terms of retirees' entitlement to severance pay, which often represents a fair amount of money for people who have been working for the same employer for a while.

There was a case I wrote about a year and a half ago which dealt with, again, a severance pay calculation, and whether you would count separate periods of employment with one employer together to arrive at an entitlement. In other words, if an employee worked for 10 years with one employer and then left, worked elsewhere for a while and came back and worked for a short period and then was terminated, the issue arises as to whether he or she would be entitled, because there's a five-year threshold period, and, if there is entitlement, what the amounts would be. There were two lines of authority on that for quite a while, and I was lucky enough to hear a case involving an editor at the Globe and Mail.

Mr Jackson: I'm familiar with that one.

Could you talk to us about the recent intervention by the government with respect to pay equity, O Reg 491, that was done in 1993 and caused some furore of those advocates of pay equity in Ontario? You're essentially a government appointee from a government position into

another government position. In terms of the degree of neutrality you were referring to in your abilities between employer and employee, would you have the same abilities as it relates to the government that's employing you?

Ms Novick: I'm not aware of that regulation, at least by number.

Mr Jackson: It was an intervention by the government which declared that a female job class does not qualify for a wage increase won by the male job class with which it has a job-to-job comparison, if that wage increase was the result of winning a classification grievance in arbitration. There were substantive dollars involved with OPSEU, and the government essentially legislated against the ruling of the Pay Equity Commission.

This is a serious matter, but from it springs forth questions about the independence and strength of the tribunal as would be exhibited through the chair and vice-chair. You've very clearly set out their independence and neutrality between the clients. I'm asking you if that would also account when the government is the employer and also your employer.

Ms Novick: I would say definitely, the same principles apply. That's something I deal with every day when I hear cases at the tribunal I'm now a member of. The Ministry of Labour participates as an active party at all the hearings because it is its officer who made the ruling that's being appealed against. I guess you could say similarly the government is a player in those areas.

Mr Jackson: The government isn't in the habit of intervening with labour legislation in a retroactive or negative fashion. This is rather unique in terms of labour law, and I classify pay equity as a form of labour law. I would encourage you to familiarize yourself with the case.

You will be leaving your employment. What are you earning with the current position and what do you understand to be your compensation level to work as the vice-chair?

Ms Novick: I'd like to clarify something. I won't be leaving to assume this position. It's something I'm going to be doing together. I'll still be a member of the office of adjudication, that tribunal, and the cross-appointment will mean I will hear some pay equity cases and that two of the vice-chairs who are now on the Pay Equity Hearings Tribunal will hear some of the cases at our office. There's also a third tribunal, the Workers' Compensation Appeals Tribunal, that's part of this pilot project, so it's a three-way cross-appointment.

Mr Jackson: Just so I understand the economics of all this, you're currently employed with the office of adjudication and you're doing that full-time.

Ms Novick: That's correct.

Mr Jackson: A portion of your time now will be devoted, even though it's a full-time appointment.

Ms Novick: That's correct.

Mr Jackson: You're collecting a stipend for that.

Ms Novick: No, that's not true.

Mr Jackson: Okay. I want to understand. They're not paying you to do this appointment.

Ms Novick: No. I'm probably working harder, but I'll be receiving the same pay.

Mr Jackson: I'm glad you had an opportunity to have that clarified for the record.

Mr Randy R. Hope (Chatham-Kent): You talked about the Employment Standards Act being very vague, and I would agree with you 100%.

Ms Novick: Certain parts.

Mr Hope: Quite a few parts, in some of our opinions. That's why we have to expand collective agreements, to make sure those loopholes the government before us forgot about we try to cover in collective agreements.

I've listened to Mr Jackson's and Mr Curling's comments. Employment equity came into place through the accord that was established between the two governments, and if it weren't for the accord I doubt the Liberal government would have moved on pay equity, because the mentality level is probably still the same as the Conservatives'. Those are the comments I wanted to make at the beginning.

I understand you're an adjudicator, referee, with the tribunal. That process gets to you when there is a stalemate between the two parties or three parties, right?

Ms Novick: Not exactly. What happens in the employment standards context is that there is an employment standards officer who investigates and makes a first-level determination of whether there's an entitlement on the employee's side, and, depending on which way his or her decision goes, the other party can appeal that determination to a referee or adjudicator. A determination has already been made by an officer, and then either the employer or employee has the right to appeal that decision to our office.

Mr Hope: With the experience you have with the Occupational Health and Safety Act and with the Employment Standards Act, carrying it now over to the pay equity, how do you feel that's going to improve the system or maybe hinder the system? I mean you as an individual who has experience in one practice.

Ms Novick: It wouldn't be fair to say the areas of law intersect greatly, but there's a certain sensitivity or general body of knowledge you accumulate through experience in one field that's somewhat portable, that you can take with you and apply, hopefully, to hearings under a different piece of legislation. I'll also be having some training before I actually hear pay equity cases, and that will give me a better grounding in what I need to know before I hear cases.

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Ultimately, I think it improves the system. It certainly provides the cross-appointees with an opportunity to expand their experience base and knowledge base among different areas. It probably also keeps us a little more interested or motivated, because after three years of doing the types of hearings we have, the issues seem to be repeating themselves. This is something new and something I've always had an interest in, so I'm hoping it'll be a positive experience for me. I can only hope the

experience I bring with me somehow also helps the other members of the panel I'll be sitting with and the parties to the litigation.

Mr Hope: Sitting on the tribunal and being a woman—I know there is still some mentality out there saying, "Here's the women again." With you being an adjudicator on this board and being a woman, will you have a biased opinion towards the outcome of an adjudicated process?

Ms Novick: I don't think so. I don't have one now. Issues sometimes arise which might raise a male-female bias, if you like. We hear a lot of cases dealing with pregnancy provisions, and I don't really take that into account when I make a decision.

Mr Hope: As one who has negotiated pay equity agreements, I wish you good luck, because the legislation is vague in some areas on pay equity. Trying to determine who is an employer is one of the other questions that's always out there. The Liberals didn't do a good job, and we're trying, through the amendment process, to clear it up. Hopefully, it will make your job much easier that the process before it even gets to you gets resolved through a negotiated process, which means your job will become easier. That is one of the ultimate goals, to make sure it can be negotiated between the parties first before it even reaches your stage of an adjudicated process. I wish you the best of luck.

The Vice-Chair: What pay range is this job in, do you know? I'm curious. Is it on a per diem basis?

Ms Novick: No. I'm a full-time member of the tribunal I sit on now, and I won't be receiving any pay increase when I go over to pay equity. If you'd like the actual figure—

The Vice-Chair: Just ballpark. I have no idea.

Mr Bradley: We're always interested in actual figures, because our pay has been frozen for six years.

Mr Hope: It's not going to be like your job, where you get paid as a member and then you come and sit in the chair in this committee and get extra pay. She's going to be doing it for straight pay with extra work.

Mr Bradley: You mean like when you're a parliamentary assistant and you get paid for breathing?

The Vice-Chair: What range is it in? Just a range.

Ms Novick: Things have changed, of course, with the social contract. Each of us probably has a different rate depending on whether you opt in or out of insurance plans and benefit plans. I always have a hard time answering when people in the bank, for instance, ask what my actual salary is, but I think the range is—

Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings): Between \$50,000 and \$150,000?

Ms Novick: That's a good range, yes.

Mr Bradley: Mr Chairman, on a point of order.

Mr Hope: Excuse me, but you had your time.

Mr Bradley: No, this is a point of order I'm asking right now.

Mr Hope: It better be a point of order.

Mr Bradley: What I'm interested in, in all of these

things, is what people make. It's for your sake as well as mine, because you people all face out there, all of us, the wrath of the public, who think we get paid millions of dollars. They should compare what the elected members get paid to what people on tribunals and others get paid. That's all. I'm not saying they're overpaid—

The Vice-Chair: I really don't think he has a point of order. Thank you for appearing this morning.

Mr Hope: The member raises a very serious—

The Vice-Chair: No, it was ruled out of order.

DEBORAH WHALE

Review of intended appointment, selected by government party: Deborah Whale, intended appointee as chair, Agricultural Research Institute of Ontario.

The Vice-Chair: Deborah Whale is our next intended appointee as chair, Agricultural Research Institute of Ontario. You have an opportunity to make a few opening remarks if you want to, or we can go right into questions.

Mrs Deborah Whale: My only opening remarks are just that I'm pleased to be here to discuss the importance of agricultural research, not only to the community in agriculture but also to the province.

Mr Waters: We had someone in yesterday who's on it, so we have been enlightened somewhat about what you're doing. One of the things I would like to venture into is your opinion about the environment and agriculture. Is there a better way to do it, without all the chemicals?

Mrs Whale: That's why we're doing agriculture research. As you know, the Food Systems 2002 goal is to decrease the use of pesticides by half by the year 2002, and that's just one thrust we have in research.

Maybe a good way of indicating what I'm talking about is to talk about the poultry industry. We are currently, in 1991, able to produce almost two times more eggs per chicken than we were only 40 years ago, and that is done on half the feed that was required 40 years ago and half the land base. That in itself is a tremendous saving to the environment.

In addition, if we look at future research that's looking at the development of the egg industry, for example, if we were to replace the protein content of the diet of that chicken by synthetic amino acids, those acids are 100% digestible, which means there would be very little manure coming out of that chicken and very little nitrogen in that manure. If, in addition, we were to add phosphate-digesting enzymes to that feed, we would then have phosphate-free manure.

What we're doing for the environment in terms of research is so amazing, it's hard to even comprehend the scope of it all.

Mr Waters: I find that interesting. Both the Chair's riding and mine touch Georgian Bay, and one of the main loaders of our large water systems is agriculture with phosphates. If you can now remove phosphates from manure before it happens, it's obviously an interesting concept.

One of the things we didn't talk a lot about yesterday is research with animals. You talked a bit about the

chicken, but is that going on with all the different types of livestock?

Mrs Whale: Do you mean research about animals?

Mr Waters: Yes, about animals.

Mrs Whale: Absolutely. A lot of it has concentrated on production research, which means we're simply trying to get more out of an animal, more meat, more milk, and also able to do that using less feed or more concentrated feeds. That's going on in virtually every animal industry because we have to be productive.

If you look at the dairy industry, for example—and I am a dairy farmer—we can now produce the same amount of milk in this province as we did, again, 40 years ago, with less than half the feed and a quarter of the land base. The competitive advantages that gives our farmers is really tremendous.

Mr Waters: Can we compete worldwide?

Mrs Whale: We sure can.

Mr Waters: And still protect our environment?

Mrs Whale: It's not "and still" protect the environment. We must compete worldwide and we must protect the environment. If we don't protect the environment, we won't be competing with anybody.

Mr Waters: The lady yesterday said the same thing, that we can compete, we are competitive, yet when I talk to farmers they're always worried about how they're going to survive, especially with GATT and all of these things happening.

Mrs Whale: You have to be worried, but when you're worried that keeps you on edge. Some of our best farmers are right on the leading edge of technology, and those are the farmers we have to encourage, those are the ones who are going to be competitive on our behalf.

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Mr Waters: What would be your, let's say, three priorities for research, or do you just feel a broad range of research is better?

Mrs Whale: I know you're aware of the six priorities ARIO has in terms of research, and certainly competitiveness is there on the top for a reason. As well, the interaction of agriculture and the environment is next in line for a reason. Within those six broad areas we have to concentrate our research, but there's another question: Do we just do research across the broad spectrum of agriculture and hope it will hit somewhere important? I think not. Particularly in a time of declining budgets, we have to be very aware of what we're doing, where we're leading research and why we're leading it there. We have to be aware of where in Canada we can be particularly competitive, in Ontario specifically. Where are the niche markets that are going to give us our best avenues for competitiveness? That's where we have to lead research.

Mr Waters: I guess this is a pet peeve of mine, that we say to our farmers, "You cannot put this on your fields or on your crops or you can't feed it to your animals" or whatever, and then we turn around and put a tolerance level for something that's being imported into this country.

Mrs Whale: That's right, and it's a source of great

concern among farmers. At the recent 2002 conference, that was brought up a number of times. It doesn't make any sense to put limitations on our farmers if we're going to turn around and import those things from other countries. If indeed we feel it's important for our land base not to have certain things applied for it, surely it's just as important for Mexico's land base. We have to be careful that we don't have a two-pronged approach to this.

Mr Ron Hansen (Lincoln): You're going to be promoted from vice-chair to chair, so you've sat a while, you've seen what the institute is doing. Do you have one or two priorities you would like, as chair, to initiate with the board coming up? It's not that you're one to wind up, but you're still a driving force with the board.

Mrs Whale: When I look at the scope of the board and I see that it is producers who represent every aspect of agriculture and agribusiness people, with an increasing emphasis put on people in food processing—we're looking at feeding what we produce into the food market as well as into other markets—it's really important for all of us to constantly assess the priorities and the directions of that research. It's important for me as chair to ensure that everyone in agribusiness and in production, agriculture, has an opportunity to feed into that knowledge.

Very importantly, and something we've started as an added initiative this year, is to make sure that we're very aware of what's happening in the entire OASCC system, the Ontario Agricultural Services Coordinating Committee. It's a huge system, as you know—91 committees, something like 780 members—and it is their recommendations from each of the specific committees that feed into ARIO. It behooves us to very definitely take into consideration what those OASCC recommendations are when we make our final decisions, but I want our members to sit in on OASCC committees on a regular basis so we know very definitively who those people are and where they're coming from.

Mr Hansen: As an MPP from the Niagara area, we have a lot of surplus fruits, and I'm taking a look at what we can do with the surplus fruits, crushing etc. I'm looking into that right now so the farms are viable in our particular area. I've always gone through the ministry, but what are you going to do? How do I interact with your board to say I have some ideas? Is that a possibility, to open up the doors?

Mrs Whale: Definitely.

Mr Hansen: How does this information, what you find out, get down to the farmer? It seems that everybody at the top knows what to do and the correct way to do it, but often the person who's farming doesn't find this information out unless it's a large farm.

Mrs Whale: First of all, in terms of your input, that's where OASCC comes in. You are very welcome to be represented on any OASCC subcommittee that you feel fits into the production of your area. I would strongly recommend that you do that, or that you ensure that the representatives from your area who are there are doing a good job. They have to be knowledgeable people and they have to be people who go back to their commodity groups and report.

In answer to your second question, this whole area of extension between the researchers and the producers is very important. Unfortunately, with government cutbacks, that's getting cut back. However, I really do believe, in agriculture in Ontario, we have a very good extension service. It reaches into all corners of every rural community. Every week, if you pick up rural newspapers, you will see lists of workshops you can attend, and speeches, and you can get information on your computer and you can get printed information by the truckload. Perhaps the difficulty is not so much in the lack of material as just the time to assess it all. It really is overwhelming to me. While I think we can never stop improving the extension services, we're really well served in Ontario.

Mr Cleary: You say you're a dairy farmer. Are you involved in any other kind of agriculture besides the dairy?

Mrs Whale: No. We have a dairy farm, and it's a closed-system farm; in other words, we grow all our own breeding stock and all our own feed.

Mr Cleary: Being that you're a dairy farmer, should we be following the US on the new technology to increase milk production?

Mrs Whale: BST.

Mr Cleary: Yes. I didn't want to mention it.

Mrs Whale: I knew that would come up today. First of all, we need the legislation to allow it to happen here. You know what's happened in Europe: They've asked that that legislation be delayed because they need time to assess what it's going to do to the industry, and Canada's in probably the same position. But we always have to remember that when our competitors have a product and we do not, we have to realize the consequences of that.

In general, we know very well that science has indicated that this is benign technology, that this is not a technology we have to be afraid of in terms of health and safety of food. Nevertheless, as an industry we have to look at whether the consumer is going to be accepting of BST milk. That's something industry is going to have to work at. They sure didn't do a very good job of selling it, in the first place, to the consumer. If indeed the industry as a whole feels it's going to be detrimental in terms of milk sales, I think we have a problem, and I don't know how it's going to be solved.

As a producer, we know that between 10% and 20% increase could be derived from BST, but at the same time we have to improve our management skills. So producers too are going to have to consider whether they're the type of people who can manage BST properly and indeed can use it to improve their milk production, and then, if they do, whether they can afford to buy more quota.

Mr Cleary: Do you feel that's happening right now in some dairy herds in Ontario?

Mrs Whale: That people are administering BST? Not that I know of. However, you could and it would be undetectable. It's a naturally occurring substance, so there's no test for it. But I don't know of anyone, and I am not using it.

Mr Cleary: We already talked about some of your priorities. Would that be one of them, to get more information and research on BST?

Mrs Whale: No, because the research has been done and it is definitive and it's worldwide. We don't need any more scientific research on BST. The issue now is one of management and one of consumer preference.

The Vice-Chair: Can we have the full name of BST just for the record so the people reading this—

Mrs Whale: Bovine somatotropin.

Mr Cleary: In your opinion, what's the greatest threat to our Ontario farmers, our producers and our distributors?

Mr Jackson: Politicians.

Mr Cleary: That's true.

Mrs Whale: There are a number of threats to Ontario agriculture. One of the threats may be a perception of that agriculture. It's really important for people who are deciding how to be supportive of agriculture, from the government side, to realize that approximately 20% of our farmers produce 80% of the products we eat and export, and that the food industry in Ontario represents a \$43 billion business, the second-biggest industry in Ontario.

With those two things in mind, we have to look, when we're deciding on legislation etc, at where the production is coming from. We should be looking after our best and our most competitive farmers and realizing that many people who call themselves farmers really are very small producers.

Second, it's important to realize now that GATT is an order, that because of GATT we are going to have to reduce direct subsidies to farmers by 20% now and maybe more in the future. It behooves us, then, to look at putting more money into research. Research is GATT-green; it means it is not countervailable. If we really want to support our active and productive farming community, we simply have to give them an edge through putting more money into research.

Third, but we are doing this, we have a tremendous emphasis now on research on environmental sustainability, and I know that has to continue as the years go on. I realize that in Ontario now we only have 10.1 million people here, but in 40 years that number's going to double, and it will be doubling, more than likely, in our prime growing areas. We have to sit down and decide how much value we put on our prime farming lands and go about and protect them.

Mr Cleary: Just your opinion: Might competitiveness be compromised if we emphasize too much on environment and regulations? It was already touched on a bit here.

Mrs Whale: That's right. Every farmer out there knows that if he doesn't have a highly productive land base he's not going to survive. Recently, farmers have initiated a program called the environmental farm plan. There will be thousands of people, myself included, who are in the process of developing environmental farm plans for their very own farms, an indication of where we put

the emphasis on the environment. The only time that emphasis is going to hurt us is if we find ourselves in a situation that we talked about at the beginning; that is, putting rules and regulations into place for our own producers, yet turning around and allowing products into this country that have been produced using those same processes or the same additives and external applications that we are not allowed to use. We have to be very careful that this is a fair playing field.

Mr Bradley: My question is on the effects of urbanization, whether you believe your agency should be—or is it?—conducting research into the effect of the granting of severances and subsequently the semiurbanization of farm areas. A little bit has been alluded to so far, in terms of the fact that you have people concerned about the environment. Some of those are genuine, but as soon as you have the urban people move out, the Ministry of Environment and Energy, particularly under the new Environmental Bill of Rights, will be chasing smells, will be chasing dust, and will be chasing bird-bangers.

Mrs Whale: That's right. It's interesting that you should bring that up, because at our meetings last week we were reviewing the new structure of the University of Guelph-OMAF agreement. One of the six new programs that has been set up is called Sustainable Rural Communities, and the discussion centred on just exactly what that program was going to do, where the research dollars were going to be put. There was a heavy emphasis being put on the need to find out where the problems were in terms of land severance policies, land use policies: Let's amalgamate that body of knowledge and figure out what we're going to do about it, how we're going to protect prime farm land, how we're going to protect right-to-farm legislation etc. That's a very important issue, and it's one we now have to find money to fund if we're going to indeed add that new program on to our U of G agreement.

Mr Jackson: Mr Chairman, I have no questions, but I know you certainly have a couple.

The Vice-Chair: Yes. If you have no questions, I'll ask two or three, just from the chair. Is yours a family farm?

Mrs Whale: Yes.

The Vice-Chair: Do you have hired help?

Mrs Whale: Yes.

The Vice-Chair: How many would you have?

Mrs Whale: We have one full-time person and one part-time.

The Vice-Chair: Have you had them for several years?

Mrs Whale: Yes.

The Vice-Chair: Have you cut back on your help?

Mrs Whale: No.

The Vice-Chair: Do you use insecticides, atrazine etc?

Mrs Whale: Yes, as little as possible. As you know, there's new technology out there which can scan fields with computers to find out where the weeds are and only spray on those spots. A lot of farmers are using that, and

the farmers in our area have access to that equipment through our local co-op.

The Vice-Chair: Are there many organic farmers in your area?

Mrs Whale: Not very many, but there are a few.

The Vice-Chair: Do you find that a lot of farmers today are cutting back on the insecticides they are using?

Mrs Whale: Most definitely. For one thing, we have to be cost-competitive and those are expensive inputs. For another thing, as I said, there's new machinery today which allows us to really reduce the amount of insecticide and pesticide that we're putting on fields. In addition to that, there are new tilling practices and planting practices which are emphasizing decreased use of herbicides and pesticides.

The Vice-Chair: You mentioned earlier that we have to keep the farm land for agriculture. In the area where I live, five years ago the land was all grown in corn or it was rented out. Today that land is sitting there growing in weeds. Nobody is farming it, and there's thousands and thousands of acres of excellent land sitting there doing nothing. Your area is probably the same.

Mrs Whale: My area isn't, actually, because it's just a very competitive farming area. It's north of Guelph. We don't see that in our area, but I certainly have seen it in lots of areas. People are looking around for alternatives for that land, and one of those alternatives is tree planting.

In southern Ontario, particularly with our population pressure, we're going to be facing those kinds of issues that they faced in Europe too. Europe has realized that if it, for example, wants to maintain its tourist influx, it has to maintain a good-looking land base, so very often they pay people to stay on farms to keep them looking good for tourists.

I don't think we've reached that point yet, because we still have a lot of land and very few people, but we're getting there, and we have to decide what alternatives are good for land like that.

1120

The Vice-Chair: What has your research institute done with regard to methanol? Have they done research and made some recommendations with regard to its promotion?

Mrs Whale: A lot of research was done, particularly in the engineering department at the University of Guelph, and there were on-farm methanol plants as well. But it hasn't proved to be economical yet, and it seems to me that the emphasis is decreasing on research in that area, and I see increasing emphasis on things like ethanol production from corn, for example. But if it can be made economical, it's certainly something farmers would use.

The Vice-Chair: But you have looked at that aspect?

Mrs Whale: Yes, for sure.

The Vice-Chair: How many cattle do you milk?

Mrs Whale: About 80 right now.

The Vice-Chair: That's why you've got some hired help. We only milk about 45 and can't afford help.

Mr Waters: Our heart goes out to you, Al.

Mr Hope: Mr Chair, with your permission, because I've heard her talk about cattle and milking, I was wondering if she's familiar with stray voltage at all.

Mrs Whale: Yes, I am.

Mr Hope: Would the research be looking into the stray voltage issue?

Mrs Whale: It's interesting. There's a fair bit of research that's being done on that at two of the CAAT colleges, and, much to my surprise, their research indicates that stray voltage is not a factor in milk production.

The Vice-Chair: Thank you very much for appearing before the committee this morning. I wish you well. Look after our farm industry. It's important. They all like to have lunch, these people, and they've got to realize where it comes from.

Mr Paul Johnson: Just think, Al. If you use BST, you'll be able to produce the same amount of milk with about maybe 35% of the cows, you'll still save on the environment, you'll have fewer cows to milk and you won't have to worry about hiring a hand.

Mr Bradley: I thought the Premier's office used BST.

The Vice-Chair: That's not how it's spelled.

PHYLLIS GORDON

Review of intended appointment, selected by third party: Phyllis Gordon, intended appointee as member, Ontario Criminal Code Review Board.

The Vice-Chair: Next is Phyllis Gordon, intended appointee as a member of the Ontario Criminal Code Review Board. Please have a chair at the front. You have the opportunity to make an opening statement, or we can go right into questions, whichever you would like.

Ms Phyllis Gordon: I suspect we should just go ahead into questions.

Mr Jackson: Your résumé has extensive experience in dealing with the law, and you've provided supports for children with psychiatric problems and disabilities, as I see it.

Ms Gordon: Many years back, yes.

Mr Jackson: You're currently at Parkdale Community Legal Services as the clinic director. Is there a reason you moved from the Pay Equity Hearings Tribunal to clinical community work?

Ms Gordon: There are many reasons I elected to apply for the clinic director job at Parkdale. I enjoyed my work at the Pay Equity Hearings Tribunal. It was the startup stage of a new tribunal, so it was very interesting in terms of the development of procedure and process and fundamentals. It was, however, a solicitor's position, and I had been active in practice both in Hamilton and in Kingston prior to going to the pay equity tribunal, and had, as you can see from the résumé, done an awful lot of community work over the years. I felt that whatever management skills I thought I might have I could bring to a place like Parkdale. I essentially was interested in the work they do, very much community-based work, and they work with the law school at York University. It seemed to me to be a

very expansive position to move to, and I'm glad I took it.

Mr Jackson: We'll get to your actual appointment,

but I'm very interested in the depth of your background. Around the time you were practising in Kingston, and paralleled with your interests at the time, you may recall there was a public outcry when the local rape crisis centre was about to shut its doors and yet funding had been transferred to the Kingston Penitentiary for sexual assault criminals. This occurred around 1987, and it triggered a series of debates in the House and a shifting of the funds. I just wondered if you were familiar with that. I know you were doing work with LEAF and other organizations in the Kingston area around that time.

Ms Gordon: No, I never worked with LEAF. I worked with the interval house. I don't think my CV indicates LEAF. I was not involved in that issue.

Mr Jackson: No, I knew you weren't. I meant whether you were familiar with it, given that you were a sessional lecturer at Queen's law and you were also involved with—a couple of other items here that caught my eye.

However, my reason for asking about that very narrow area is because you're about to receive an appointment to the Ontario Criminal Code Review Board, and of course the issues around public safety are foremost in the public's mind at the moment and there are substantive pressures being put on the board to release people into the community. I just wondered if you could share with the committee some of your views so we can get a sense of your perceptions and, with your experience, a sense of the kinds of decisions you feel would be fair.

Ms Gordon: Generally, my interest in this appointment actually comes because I see it as a very difficult task, the balancing of the public interest and the rights of individuals. I believe the legislation set out in the Criminal Code actually sets a priority for public safety and that the safeguards that have been given to accused people who are incarcerated in the mental hospitals as a result of criminal behaviour are particularly rights to be reviewed, not necessarily rights to be released. I think there's a distinction. There's a right to not be forgotten.

My experience leads me to be interested in adjudication in particular, and in balancing. I am not a psychiatrist or a psychologist and would see my own task on the board as more the balancing and weighing of the legal issues and the considerations the Criminal Code sets out.

Mr Jackson: You would be aware that there have been some highly publicized cases of the failure of certain individuals; when the board wasn't always right, would be one way of putting it. In my community, the Jonathan Yeo inquest was quite filled with problems around this whole issue. It is of considerable concern that the circumstances that emanated from the Yeo decision can be traced back to treatment by the Clarke Institute and boards such as this one.

I just wonder to what extent you see the pendulum swinging a little bit back, where, because you are a layperson and not a psychiatrist—you are a lawyer, but I still see you standing in the shoes of the public as a member of this committee and not the prescribed judge-chair or retired judge-chair or the psychiatrist. I think we have to look to you to balance off the special interests of community safety.

Ms Gordon: I currently work in a community-based organization that has activities in many parts of Toronto life, basically, in many areas of the law. One of the areas we work with are people called psychiatric survivors in the area of Parkdale. Another area the clinic is very involved in is the rights of victims of sexual assault and victims of domestic violence, family violence, and street assault. In fact, the interests of the public and the individual in a sense are actively at the clinic. Now, it's never occurred in my tenure that the same person has been involved, and I've not had to make judgement calls.

Mr Jackson: But they won't be at the board.

Ms Gordon: They won't be at the board, but I think I'm bringing to the decision-making a sensitivity to women's issues in particular that the clinic has been involved in with respect to sexual offence.

1130

Mr Jackson: If time permits, I want to have one final, follow-up question.

The Vice-Chair: You've run over your time.

Mr Jackson: I know that, but I said if time permitted, Mr Chair.

Mr Frankford: We were really on the question I was going to ask. I know where the legal clinic is located, an area where there's a significant ex-psychiatric population. I was wondering if your experience there had given you any opinions on the work of the board.

Ms Gordon: Indirectly. One of the tests the board looks at is the needs of the accused. It's really apparent, probably anywhere in the province but especially in our area, that it's hard to find places for people to live well once they're released. That's an issue, and it's an issue that if there isn't a proper plan, I would think, in many cases the board would decide not to release. It is critical that the environment to which the person is going be examined. Hopefully, if it were a different time of fiscal policy or whatever, if we weren't in such a restraint period, one would hope for better community-based services for people. In that sense, yes, we know how difficult it is to find places. The rooming-house issue is really hard for people who come out of Queen Street.

I guess I'm just repeating earlier what I said to Mr Jackson. The issues of random violence really are very upsetting to people at the clinic, and we have considered going for standing on behalf of victims. We haven't done it yet, but we've been wondering whether we should be. This clinic has many different interests, and I think I bring that kind of understanding because of my work at the clinic.

Mr Frankford: In your work on tribunals, you would be seeing the availability of follow-up services and housing as something that would very much influence your decisions.

Ms Gordon: I think it is important, yes.

Mr Frankford: You'll still be at the clinic, or is this going to be a full-time position?

Ms Gordon: As far as I know, this is a very part-time position.

Mr Jackson: You can't live on it.

Mr Hope: Looking through your résumé, I see you practise with Mary Ann Higgs in Kingston. I know her dad very well. He lives in Chatham, in Kent county. I know Mary Ann very well, as a matter of fact.

I wanted to talk about the role and responsibility now that will be placed upon you once this committee makes its decision on your appointment. The protection of the public from a dangerous person, the mental condition of an accused: Taking those two major factors, how are we going to balance the public concern and the rights of an individual? I mean, it's easy for somebody to say, "I was nuts at the time" before a court; trying to balance that with the general public's concern. We all read the papers today about how people feel about people who have committed such crimes.

Ms Gordon: I can't honestly answer that question yet. After a couple of years of adjudicating I would be in a much better position to tell you everything I bring to those decisions. I come to the question fairly fresh, in a sense. I have not been on the bandwagon for either side, if you will. In that sense, I'm quite neutral.

The legislation makes it quite clear that you don't release unconditionally unless you're sure—the language is "is not a significant threat," so the balance is set out in the legislation itself for a full release in favour, I suppose, of protecting the public, is the way I read the legislation.

It's very difficult in a vacuum to be asked one thing or another. Each case is a case. I've done enough adjudication in other contexts with arbitration work to know you have to listen to the evidence. You really do need to listen to the evidence and you need to listen to the plans and what the future issues are for people.

I think we all know from our own experience of knowing people who have depression, not necessarily that they've committed criminal acts with a mental disorder, how critically important the follow-up is and the support that exists. I can't answer the question in a total vacuum. Everything has to be heard. In particular, I would rely on the expertise. I probably have some skill in asking questions of experts and would use those skills. It's not necessarily psychiatric expertise that I've cross-examined or questioned in the past, but I certainly will be interested in following through and asking the questions that seem to me to be the most relevant.

Mr Waters: I'd like to touch on patients' rights. Oak Ridge is actually in the Chair's riding, but it's so close to the boundary that we both live with Oak Ridge in our riding. We've had ongoing problems with the rights of patients. I went to tour the facility with a minister of the crown and we were not allowed to walk down certain corridors because it would infringe on the rights of patients. One patient actually got the plans to the institution, and the staffer who relieved that patient of the plans was brought up on a discipline hearing because, after all, the patient had the right to the plans.

Mr Bradley: Welcome to Ontario.

Mr Waters: This was previous to us being in government; these things go back a long way. There's got to be a balance. At times, in our communities the people feel the balance is not there. I would like your opinion on

whether you feel the balance is there or whether we've gone overboard with the rights of these people who are being held, especially the major, violent ones.

Ms Gordon: I'm not really well enough informed to answer your question fully in terms of what the rights are right now for people who would be at Oak Ridge. I actually toured Oak Ridge many, many years ago. When I articulated at the Attorney General, somehow I managed to have a personal five-hour tour, and I was overwhelmed. It was a long time back, though. Patients assisted in the tour, right through, interestingly enough. I was allowed right through. I wasn't an MPP, though.

Mr Waters: That must have been a while ago.

Ms Gordon: I can't really answer the question. I'm sorry. If we're talking about internal rights that can lead to some level of self-esteem and therapeutic advancement within the institution, that's one thing. If you're talking about taking away a minimal civil right within the institution as punitive, I think you should be clear it's punitive, but I don't think you should then pretend you're providing therapy. There are real issues there, and that's a conundrum that I don't think any criminal justice system's solved yet.

1140

Mr Bradley: I would have thought that the members of the government, my good friends on the other side, would not then have blocked the victims' bill of rights which was put before the Legislature, if there were great concerns in this area. Perhaps the next time it comes up, it will not be blocked.

How were you approached for this? How did you find out about this job being open? Did somebody phone you?

Ms Gordon: No. There was an ad some time back in the Ontario Report, or something like that, for the chair of the tribunal. I got interested in it and I sent in a résumé.

Mr Bradley: Have you been politically active in years gone by?

Ms Gordon: It depends what you mean by "politically." I have been small-p politically active by being a member of boards of directors of groups, community membership, that kind of political activity, and many years ago I was a member of the NDP.

Mr Bradley: One of the problems we encounter has been alluded to by some of the members. Mr Waters, I thought, made a significant comment about the fact that there is a perception, real or not, on the part of a large portion of the public that the pendulum has swung very much in favour of—I hate saying one side or the other, but to one side of the issue in terms of mental health.

Many of us, as MPPs, get questions from our constituents and pleas from families of mental health patients, who have on their side advocates who are very well organized, very well—I don't know if they're well paid, but they're well organized and very committed to the cause. The family may have a different point of view, but nowadays you almost have to be out there committing a crime or about to commit a crime or harm to someone before you can be confined. Many parents, many spouses, many members of families are very concerned about this.

In your view, because you're dealing in this general area, is this a legitimate concern, that in fact advocates have won the day and that families and others are now in a position of not being able to influence the placement of members of their family?

Ms Gordon: Bottom line, I agree with the trend of the reforms that were made to the Mental Health Act. There have been great abuses, which we don't hear about, in the past; people who have been kept in institutions—I'm not talking right now about criminal conduct, I'm talking about the civil side—people who have been kept there for a long time. The people we know in the Parkdale community are often without their families now; their families are not there to support them. They come from all over the province and the city, wealthy areas of the city as well, but they haven't been received and supported in their families. I don't see it as an issue you can just say yea or nay to. They're really subtle questions.

Mr Bradley: That's a fair answer to say that.

I think of people who suffer from schizophrenia, for instance, parents who are often in a different position than the people themselves. I had a woman who called me—I'm sure she called every other political office—and predicted her daughter would die. And her daughter did die. There was no question in her mind. She pleaded with everybody. I was not in a position to do anything; others were not. She wrote a letter to the editor and said, "I predicted this, and it has happened." In that case, it was the person herself who died as a result of the fact that she had all these rights, had the right to put herself in a vulnerable position where she ended up dying, even though this somewhat elderly mother was endeavouring to prevent that from happening.

That's the point I'm making when I say the pendulum appears to have swung so far to the other side that we're giving people the right to do harm to themselves and to die. How do we find a better balance?

Ms Gordon: It's very hard to argue or to discuss something from one case, again where you don't know—it's almost like being asked to adjudicate in advance. If the mother had been capable of convincing the institution that her daughter was of imminent danger to herself, she should not have died. Something went wrong in the system as it played out in that story. It could have been years of frustration on the part of the mother, I don't know; she could have quit, might have stopped trying to use the system. But for somebody who is in imminent danger, there is a method of providing them treatment or at least keeping them in the institution.

There are going to be mistakes. I don't know how we balance it all out, and I don't think any of us—I can't speak for everybody. I don't have the wisdom to solve all those problems. I do know there are lots of problems on the side of people who've been in mental hospitals for a long time who have had no support, who have really lost their life, have been overdrugged, overmedicated.

Maybe the pendulum will swing back to a middle ground. I don't know how it'll happen and play out. My hope is that people will get more sensitive to the questions of treatment and rights combined and that we'll deal

better, but it's going to take a long time. We're very far from where we were 50 years ago or 100 years ago.

Mr Bradley: I'll just make an observation and give some time to the Conservative Party, which wishes one more question, with the consent of the committee.

In my estimation, if the public could vote for this position, they would certainly be voting for the pendulum to come back. I know we appoint these commissions, and I'm not saying the public will is necessarily going to be correct, because perhaps not all the information is available. I simply want to reflect as a committee member, as an elected member, what I am hearing in my constituency, albeit from individual people, and it doesn't mean it's a good cross-section, but my suggestion would be that the public is what you would call fed up and would be much more radical on this than even I on this particular issue.

I promised, if the committee consents to it, to give Mr Jackson time for his final question.

The Vice-Chair: Do we have unanimous consent? Thank you.

Mr Jackson: Thank you, committee and my colleague. When we were discussing, your last comment had to do with domestic violence. That triggered a question, because this board you're about to be appointed to looks at a threat to society but not to a specific other member of society, as I understand from some of the hearings I have reviewed.

In the case of domestic violence, there's sometimes threats back at individuals, in particular women, who were the victims. They do not have standing, nor do they have rights to have impact statements before your board.

How will you be able to bring that sensitivity to those board decisions when in fact your mandate is focused on the broader question and not the specific question of the safety of an individual who's been threatened, or one whose manifestations of antisocial behaviour are directed

specifically to an individual and this is known in the psychiatric reports?

Ms Gordon: You're saying that the psychiatric reports would themselves indicate that the accused has continued to make threats against his wife?

Mr Jackson: That the nature of his violence is general but focused at an individual who feels threatened. When this is before the parole board, it can dealt with. This is not the parole board; this a different board.

Ms Gordon: I'm finding it a little difficult to answer, in one way, because obviously, as you know, I haven't spent a lot of time learning the jurisprudence of this board yet. However, I think it's fair to say that the crown, which is entitled to come, can draw the board's attention to those kinds of observations that would be in the medical reports.

I think there's a distinction between a threat that was made at the time somebody's trial occurred or when he was found unfit to stand trial, and if he's been at Oak Ridge for 12 years and what he's doing now. A lot of it's timing as well.

The Vice-Chair: Thank you for appearing today. Good luck.

I ask the committee now to determine whether it concurs with the interviews this morning.

Mr Waters: So moved.

Mr Jackson: I second it.

The Vice-Chair: All in favour? Opposed? Carried.

Finally, we have a report of the subcommittee. Are there any amendments or changes, or could we have a motion to adopt the subcommittee report?

Mr Waters: So moved.

The Vice-Chair: All in favour? Opposed? Carried.

This committee is adjourned until about March 23, I would think. Good luck. Have a good holiday.

The committee adjourned at 1152.

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**In attendance / présents*

Substitutions present/ Membres remplaçants présents:

Abel, Donald (Wentworth North/-Nord ND) for Ms Harrington

Hansen, Ron (Lincoln ND) for Ms Carter

Hope, Randy R. (Chatham-Kent ND) for Mr Mammoliti

Jackson, Cameron (Burlington South/-Sud PC) for Mrs Marland

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/Prince Edward-Lennox-Hastings-Sud ND)
for Mr Marchese

Clerk pro tem / Greffière par intérim: Decker, Todd

Staff / Personnel: Pond, David, research officer, Legislative Research Service

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Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Wednesday 23 March 1994

Journal des débats (Hansard)

Mercredi 23 mars 1994

Standing committee on
government agencies

Comité permanent des
organismes gouvernementaux

Intended appointments

Nominations prévues



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STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Wednesday 23 March 1994

Mercredi 23 mars 1994

The committee met at 1008 in room 228.

INTENDED APPOINTMENTS

JOAN TINGLEY

Review of intended appointment, selected by official opposition: Joan Tingley, intended appointee as member, Ontario Film Review Board.

The Acting Chair (Mr David Johnson): I invite Ms Joan Tingley to come forward and have a seat. Thank you for being with us today as an applicant for the Ontario Film Review Board. This interview process will be half an hour in duration. We invite you to say a few words at the outset to introduce yourself, and then the members will be asking questions of you.

Ms Joan Tingley: My name is Joan Tingley and I've lived in Peterborough for 25 or 30 years. I'm retired from my job as secretary and organizer for a union. Presently I do work, because I teach French immersion classes as a substitute teacher of French.

I'm quite involved in the community, although I've cut down my volunteer work. I used to be president of the part-time students' association, president of the Canadian Mental Health Association. What else did I do? I chaired the community response group for a couple of years. Now I'm looking around for something more challenging and interesting.

The Acting Chair: Thank you very much, Ms Tingley. The questioning will start with the official opposition party. We have about 10 minutes apiece.

Interruption.

Mr Alvin Curling (Scarborough North): We've got to put up with all these different noises around here. That's the welcoming trumpet for you, Ms Tingley.

Ms Tingley: Thank you, Mr Curling.

Mr Curling: I too want to welcome you. You said you're looking at a challenging position, something challenging to do, and you have arrived into an area that poses a lot of challenges, needs boldness, and of course some of your former work would add to making this job maybe worthwhile for you.

I was reading the briefing notes, which talk about being sensitive to the community while judging and assessing films and the different things you have to do. Coming to this job, I presume you have a full understanding of what "community" means, especially in Ontario, now that we've changed. You hear all the nice, fancy words about the diversity of this community, and I hope we are sensitive to that. What could you say about that?

Ms Tingley: In terms of Peterborough, I personally am a member of the community in a peculiar way, by reason of the fact that I'm retired and Peterborough is a retirement community, but also by reason of my association with the younger people in the community. I spent two years in France with young students, so I feel as though I were tuned into their thinking and that I wasn't isolated as a retired person, sort of a little box. I do come out of that box, although I know what their concerns are.

If you've been reading in the press, Peterborough is really vociferous in fighting against any paintings or works of art or film or videos, so I feel that Peterborough may not be entirely representative, but it is representative of Peterborough, of course.

Mr Curling: That's the question I was going to ask you, if you feel that Peterborough is really representative of Canada, of Ontario, because the diversity—

Ms Tingley: You would have to say of Ontario, I guess, Mr Curling, because of the fact that there's a film board in every province, isn't there?

Mr Curling: I'm talking about Ontario. I'm just in Scarborough, a couple of miles away from you, and it changes dramatically as you move away from Scarborough to Oshawa, to Peterborough, in terms of community standards. You mentioned the young people. Lately Lyn McLeod has had a task force on jobs, and we've been listening to students and young people. One of the things they have been telling us is that we are not listening, that we keep telling them what it's all about, what standards, how to behave, that "No one is listening to us." I'm a bit concerned too that we don't force Peterborough community standards, which of course in Peterborough must be very high—that that community standard is being enforced upon the other areas. Do you feel you are bringing that flexibility to this job—

Ms Tingley: I don't know whether you're talking about imposing standards on university students in Peterborough.

Mr Curling: The students, no—

Ms Tingley: Peterborough is a university city, but I have found in my association with the students that they bring their community standards with them when they come to Peterborough. You can think of them as a group separated from any community. They bring the standards of the cities they came from to Peterborough, and I think they enrich the city of Peterborough.

Mr Curling: How much do you know of the Ontario Film Review Board?

Ms Tingley: I just know what I have read. I have a

paper which sets out their mandate, and I know it's been described as a very fractious board and that lately it has been under a lot of criticism because of what some people see as a liberalization of their policies.

Mr Curling: The former chair, Robert Payne, had some very direct criticism of how the board is run. Are you prepared in getting in there to make some of the changes he talked about? He's very concerned at the way the board is being run and how they assess community standards etc. Are you prepared to make those kind of changes?

Ms Tingley: I would say yes, I'm always in favour making changes if they're positive changes and if they're needed, but it would be very presumptuous of me to say at this time what changes should be made and if changes should be made, because I haven't been on the board and I don't know exactly how it works. I know what the ratings consist of. If changes are seen as desirable and necessary, then certainly I would support those changes.

Mr Sean G. Conway (Renfrew North): Ms Tingley, thank you for coming. You appear to be eminently well qualified for this task and I'm very pleased to have an opportunity to hear you this morning.

Just generally speaking, what are your views on the general question of standards, community standards, and what might be allowed on the screens of Ontario, since the board to which you are now being appointed has some considerable sway over those matters?

Ms Tingley: I would find some things absolutely unacceptable that should not be allowed, and one of those things would be child pornography, for instance. Violence: A lot of people seem to associate the things shown on the screen under the heading of sex, but they're really not sex; they're an exploitation of sexual practices, and to my mind they come under the heading of violence.

These are only my personal standards, Mr Conway, and I would have to be introduced to whatever the rules and regulations the board—I almost said censor board, and that's supposed to be a bad word, isn't it? Wasn't that done away with some time ago? I would have to familiarize myself with what is acceptable but at the same time keep close to my own personal opinion about what is acceptable.

Mr Conway: I appreciate that. I'm somewhat younger than you are—

Ms Tingley: I'll admit that.

Mr Conway: —and I guess I'm getting very old-fashioned in my early middle age, but I'm quite astonished, quite frankly, at what I see on television these days. I don't watch a great deal of television. I'm absolutely stunned.

Ms Tingley: My grandchildren are not allowed to watch television.

Mr Conway: I think it was the great John Milton who once wrote, 300 years ago, that a person had to experience a bit of vice to appreciate virtue. I've going to leave my friend from Mississauga to opine on that perhaps to a greater degree than I will.

You've indicated where your concerns are, but I also would be interested in knowing, what do we do at the

film review board in Ontario, recognizing that we're in this incredible new world of megastations, that people can live in RR 1 Omemee and beam in just about anything? Where you do see the Ontario Film Review Board sitting in relation to what is clearly a global village and in terms of telecommunications now bringing fantastically wonderful and positive things and unprecedented trash and garbage?

Ms Tingley: Who did you quote from, Mr Conway?

Mr Conway: John Milton, in a famous piece.

Ms Tingley: Well, I'll quote from Plato, who said that if you fed on poisonous weeds you would grow to be poisonous. Perhaps that's your outlook of the trash, as you say, that we're subjected to. But what concerns me a lot, Mr Conway, is how much control do we have? How much control do we have?

Mrs Margaret Marland (Mississauga South): That's a very good point to start off with. You're going to be a member of a board, Ms Tingley, which is going to have or should have a lot of control, so I'm not encouraged to hear you ask the question about how much control we have. When you said you're opposed to child pornography, well, that doesn't enter into the debate because it's illegal, so you won't be classifying child pornography.

1020

It's not a secret, by any means, that I have had a tremendous concern for the last five years about what the Ontario Film Review Board has been doing and how it operates. We have very little time to ask you questions, and you're now being appointed to that board. How do you feel about viewing films at eight times the normal speed, reviewing material at eight times the normal speed?

Ms Tingley: I didn't know that was the practice, Mrs Marland. I would say that you could not make an intelligent assessment if you viewed something which was going at eight times the normal speed.

Mrs Marland: I appreciate your answer, and that's what I was hoping you would say. They do review the material at seven to eight times the normal speed with the volume turned off, and I've always said you couldn't tell whether it was rape or consensual sex if you didn't know what was going on.

You have quite an academic background in terms of where you've been working and your qualifications. I'm wondering if you're familiar with the studies that now exist, quite extensive professional studies about the correlation of violence against women with film violence and media violence. In this case I want to talk about film, which is the area of responsibility you're leading into.

This board has become very controversial in the last 16 months because of a motion it was dealing with about reducing the standards of what it would accept for classification purposes.

Ms Tingley: Excuse me, Ms Marland. Was that passed or was that—

Mrs Marland: It was passed by their policy committee or planning committee, whatever it was called. It went to the full board and it was passed, but because of the outcry from the public it wasn't implemented. I under-

stand the board is going to look at it again. At least that's what Dorothy Christian told us.

If you had to vote on "acts which include bondage, ejaculation on the face and insertion of foreign objects," which is what was to be permitted, how would you vote?

Ms Tingley: On all of those?

Mrs Marland: On all of those or any of them.

Ms Tingley: Certainly I would object very strongly to those sorts of—is there no delicacy left in the world, Mrs Marland? I want to get back to the fact that you said that these—

Mrs Marland: You would vote against those items being allowed to be distributed in material?

Ms Tingley: Yes.

Mrs Marland: Okay. You mentioned a group in Peterborough that's dealing with censorship in art forms, and recently in Toronto we've had this very controversial case of the artist depicting children in sex acts. There's a lot of material that gets classified by the Ontario Film Review Board that's very marginal, involving, if not children, people who are made up to look like children. This is a tremendous concern, especially with young girls. I'm just wondering if that kind of material is something that you feel should be prohibited or should be classified. That's one question.

Second, do you think the Ontario Film Review Board, in classifying films, has a responsibility to the public first or the industry that produces it first? The former chair, Dorothy Christian, believed that the first responsibility of the film review board was to the industry and has stated that publicly.

Ms Tingley: No. I don't agree with that. The industry is interested in making money. The thing that always puzzles me is how many people there are in our society who want to watch these aberrant acts, and why, if people are in the business of making money, they feel it necessary to produce them. I think our responsibility as a board is certainly to the public.

Mrs Marland: How will you establish your community standards? How will you go out to evaluate what the community standards are?

Ms Tingley: If you'll bear with me, this is a little story I'm going to tell you. For quite a number of months now Peterborough has been in an uproar over a painting which was shown in a very prominent place on a main street, George and Charlotte. It was a painting of a nude woman which was meant to depict the power of women, but a lot of people in the community saw it as obscene, as pornographic, and there was a huge hue and cry. The mayor went down and removed this from the window. I drew a parallel with that painting with what I imagine my work on the board would be, because it certainly was not suitable for family. You couldn't see it unless you were accompanied by an adult and it wasn't—what's the other classification, Ms Marland?

Mrs Marland: There are about five classifications.

Ms Tingley: In moving this painting from this big window, I would imagine that it would be the same sort of thing as if we restricted it, because when it was

moved, children couldn't see it. You had to pay. You had to go into that art gallery and pay to see it. I think that without the film board itself, Peterborough has managed to censor this, to review it, and to put it in its proper perspective, in its proper place in the community.

Mrs Marland: You're going to represent the community. How will you establish what the community standards are? For example, the judge who permitted lap dancing said that was the community standard, and that isn't a community standard, so I think we need to know how you will establish a community standard as a benchmark against which to measure your decisions on what films should be prohibited outright and what should be classified. And my colleague has a question.

Ms Tingley: Briefly, I can't see myself at this moment as having that much power without consensus, without consultation, without knowing more about it. I think I would be very presumptuous in telling you that I can make all these opinions without further study.

Mrs Elizabeth Witmer (Waterloo North): I can certainly tell you my community doesn't support lap dancing. Those are not the community standards of Kitchener-Waterloo.

Ms Tingley: Nor does Peterborough.

Mrs Witmer: However, I want to get back to the issue of violence against women. It is being demonstrated that certainly media violence and everything else that's happening does have an influence, unfortunately, on violence. I introduced a private member's bill because what we're seeing at the present time is a proliferation of video games that do show sex and violence, and of course it's always the females who are being attacked.

What I intend through that private member's bill is to amend the Theatres Act and that would give the Ontario Film Review Board the power to classify the video games that are on the market at the present time. What would your opinion be?

Ms Tingley: I think that would be an excellent suggestion because it seems to be such a mammoth thing, and there seems to be—again I'll have to use the word "control" because right now I guess a 12-year-old could probably go in and buy a video.

Mrs Witmer: Yes, the access is there. There are no guidelines whatsoever.

Ms Tingley: I think the acts of brutality against women are almost sickening.

1030

Mrs Witmer: I just have one other question. Who encouraged you or invited you to apply for this position?

Ms Tingley: My résumé was in the hands of the ministry and I was approached because at that time, and still now, Peterborough is a very contentious community, with letters on the editorial page. It is really good in a way that the consciousness of people is being raised and they are becoming more aware of the fact that there is still violence against women and still things which are unacceptable, according to their standards, being shown.

Mrs Witmer: Was there an ad in the newspaper for this position?

Ms Tingley: No, there wasn't, but the board has not gone without its fair share of publicity. Whether it's fair or not I don't know; notoriety, I would almost say.

Ms Jenny Carter (Peterborough): Welcome, Joan, to Queen's Park. Our paths have been crossing, I think, for the last 20-odd years in different ways. Obviously, I know very well the different things you've been involved in. I wonder if you could say some more about what in your background makes you a suitable person for this position. I know you mentioned that you travelled with students. I haven't done it for two years but I have done it briefly and I know it certainly does shake one's ideas up a bit.

Ms Tingley: It was an eye-opener to me when I first went to France with students and was there for a year, because students are described as, "Some of them are lazy," and "They just want to travel; they don't want to study." I was with a group of 22 young men and women and I found that they were encouraging me in my work and they didn't fit this stereotype of students as very careless. They were all very dedicated, hardworking students and had very high standards.

I was sort of like a house-mother. I think that was one of the reasons I was encouraged to go over, but they actually inspired me. So I feel that my association with younger people and with every member of the community at different levels of education and socioeconomic levels makes me suitable for this sort of a—

Ms Carter: So you've had different jobs, some involved with young people, some not, and you've raised several children as well.

Ms Tingley: Right.

Ms Carter: This whole business of community standards and what's permissible seems to be the nub of the problem that people on the film review board have to face. You did raise the question of this picture and also whether Peterborough is representative in this kind of way.

I think this picture does raise a question, very clearly, because normally when we say that something is objectionable, we say it's because there's an exploitation of sex or that somebody is being degraded or that it's dehumanizing in some way. In the case of this picture, that was not the case, because actually it was part of Women's Week celebrations and it was meant to express female power and how wonderful it is to be a woman. So obviously there was a clash there between what you might call artistic expression and people's desire to give artistic form to feelings and beliefs they have that they want to propagate in that way and the fact that it was a nude woman, although it wasn't in any way—

Ms Tingley: Pornographic.

Ms Carter: It wasn't terribly realistic, no.

Ms Tingley: Well, it had to be explained to me. I didn't understand it. I think what the legal body which set up these standards described as undue exploitation and also harmful to the community—while I personally did not think this painting was harmful to the community, it was seen by the majority of the good people of Peterborough as harmful to the community.

Ms Carter: So it failed the test of community standards, in other words.

Ms Tingley: Yes, that's right. It did, yes.

Ms Carter: Although, as I think you suggested, there are other things that might seem to some people to be much worse.

Ms Tingley: At the same time that all this hue and cry was going on, they were licensing a strip club. So there you go.

Ms Carter: Yes. How do you stay in touch with community standards? How, as you're on this board and time unfolds, will you feel that you know what community standards are and what standards should be imposed?

Ms Tingley: I don't think you can impose standards. In Peterborough they are really determined that they know what their standards are and they're going to follow them, and I admire them for that. But I do think I am in touch with a great many people, young and old and, as I said before, in all walks of life, so I'm pretty well clued in to the pulse of Peterborough.

Ms Carter: Obviously, there are very different elements in the population so there would be several different standards, as it were, operating at the same time among different groups.

Ms Tingley: Yes, and in great conflict.

Ms Carter: Would you say that the most strict level, the people with the lowest tolerance, are the ones that you would go along with, or how do we solve this problem?

Ms Tingley: No, I wouldn't. I think one has to be very diplomatic, but I watched city council meeting the other night, where it was discussing this painting and whether it should be exhibited and whether the mayor had done the right thing in threatening to refuse funding. I thought the language that those councillors used was obscene and I thought it was objectionable. They said that the art community was arty-farty, that the people exhibiting the paintings were harpies, and they used all sorts of language which I found distasteful, and yet I still have to keep in mind that the majority of those people did not want that painting. They did not want their tax dollars going to fund this organization. They may have been mistaken, or I'm mistaken, but they have a perfect right to that opinion.

Ms Margaret H. Harrington (Niagara Falls): You mentioned you found city council meeting distasteful—

Ms Tingley: No—

Ms Harrington: No, part of what was going on, part of what was being said.

Ms Tingley: I don't want that to go back to Peterborough, by the way, Margaret.

Ms Harrington: Oh, I'm sorry. I just want to ask you, whatever led you to put your résumé forward? Why would you want to be part of viewing these films, at whatever speed they go? What actually prompted you to put your résumé forward in the first place?

Ms Tingley: I had applied for a position on the board which dealt with children and the teaching of French. When my résumé went through the system, I was seen as

representative of the community in other ways and I was asked if I would consider this appointment.

Ms Harrington: So you were actually asked to consider the film review board.

Ms Tingley: Yes, I was. At the time, as it has been for some years now, or at least for a year that I'm aware of—it is a very contentious board, as you know, and it seemed sort of a challenging position. Some years ago, when I was the president of the Canadian Mental Health Association, we did one of the first briefs for presentation to the study on violence on television and the effects of violence, so I had been introduced to it. I had a certain amount of knowledge, but I've got a lot to learn.

Ms Harrington: I think it will probably be quite an experience, I'm sure. So you would look at it as a public service—

Ms Tingley: Yes, I would.

Ms Harrington: —on your part, to be going through this, probably, ordeal that you will be going through. I just wanted to point out to you that in the city of Niagara Falls, a women's group has made a video of local women, to give voice to the feelings of local women about the impact of pornography and violence on their lives. I would just commend it to you if you do have time to watch that.

Ms Tingley: Yes, I'll read that, Margaret, because that's what I'm doing now; I'm sort of studying.

Mr Conway: You know, it's not long ago, I was saying to the member from Waterloo, when I was first elected here, the chairman of the then censor board used to have a night at the Royal York Hotel and invite members—I was invited but never went—and you got to see a film of all of the outtakes.

The Acting Chair: We thank you, Mr Conway, for that little bit of history, but I think we should move on.

Mr Conway: I'm not condoning it.

Ms Tingley: Was this before dinner?

The Acting Chair: Again, I would like to thank you very much, Ms Tingley, for being with us today.

Ms Tingley: Thank you for having me.

1040

BRYAN JAMES MACKAY

Review of intended appointment, selected by government party: Bryan James Mackay, intended appointee as member and chair, Provincial Schools Authority.

The Acting Chair: Mr Mackay, I think you're somewhat familiar with the procedure now. If you would just take a few seconds at the beginning to introduce yourself, then each of the caucuses will have some questions of you.

Mr Bryan James Mackay: My name is Bryan James Mackay. I'm currently employed by the Ministry of Education and Training as the team leader for support services. That responsibility includes the administration of the Ontario student assistance program and various college and university accessibility issues. I've previously held positions in the ministries of Colleges and Universities, Community and Social Services and Health.

Mr Conway: I think people should know—Jamie can correct—this is an internal appointment. I don't know whether you do this very often in this committee, but this is an internal appointment. This is done not by the government; this is done by the deputy. Jamie is a public servant. As long as people understand that.

The Acting Chair: We'll take that into account.

Mrs Witmer: Thank you very much. I questioned why he was here, since it was an internal appointment.

The Acting Chair: I apologize. I was assuming we were following the regular rotation, but apparently it's the government's turn. I don't know how that happened exactly.

Mrs Witmer: Oh, because they're the ones who asked him to come here. Okay.

Mr Gary Malkowski (York East): I was reading your résumé, and I noticed one area that could be, say, missing from the résumé: your knowledge of the issues of blindness, deafness and learning disabilities. Are you familiar with the provincial and demonstration schools project team and the work it has been doing in developing the three options in terms of restructuring?

Mr Mackay: Well, I have not—

Mr Malkowski: I can give them to you quickly. The first option is to keep the provincial and demonstration schools underneath the ministry; the second is to transfer them to the local board, which would be responsible for running the schools; and the third option that is being discussed is to establish a provincial agency or board that would be at arm's length from the government. I'm just wondering what you already know and what your comments would be about the restructuring that's already under review.

Mr Mackay: I am familiar with the review, although I am not directly involved in conducting it. I think that the decision in terms of which one of those three options the government pursues really should be on the basis of how we can best provide educational opportunities for the students in those schools. I know that a final decision hasn't been made in that regard.

I've become familiar with the operation of the schools over the last number of months because I've been sitting in on the Federation of Provincial Schools Authority Teachers, which is the provincial school teachers' association, and the ministry's management side on its joint employee relations committee meetings and have learned about the issues in that way. I've also been involved in some of the former Ministry of Colleges and Universities work on the Review of the Educational Programs for Deaf and Hard-of-Hearing Students in Ontario.

Mr Malkowski: Could you review what you were saying you had learned from the deaf education review? Could you make any comments?

Mr Mackay: I think we learned a number of things in terms of not just the opportunities that are provided through our provincial schools, but more importantly what services are provided when students move on to the post-secondary level. We learned that there were people who wanted to establish a centre of excellence, so to speak, where we would concentrate services for those

students, and others who believed we should really move to accommodate them at all our schools. It's that second approach that we've been pursuing up till now. I think we will continue to do that, acknowledging that there are some centres, like George Brown, where we might be doing better than at others, but we really do need to ensure that there are opportunities for deaf students, for example, to pursue their studies at any of our post-secondary institutions in the province.

Mr Malkowski: Just one more question regarding FOPSAT: Are you familiar with the recent court decision and would you perhaps comment what you feel if FOPSAT would want to join another union? Are you, first, familiar with the issue, and then would you be able to make some comments?

Mr Mackay: I'm not certain about what court case you're talking about. It is my understanding now that FOPSAT is affiliated with the federation of teachers.

Mr Malkowski: The case is the Ontario Court case where the court ruled in favour of the government. It was a court decision versus the Ontario government. Are you familiar with that?

Mr Mackay: I'm not.

Mr Tony Martin (Sault Ste Marie): In terms of the authority and its mandate and, at this point in time, the approach to providing education for a specialized group of students in need in the province and the question of the geography, being from northern Ontario, I certainly have a real concern. At this point, we ship our kids from a very early age down to southern Ontario for their education, if that's the choice parents make for their children. I have to tell you that from some personal experience and also from talking to a lot of people in the north, this is something they choose to do sometimes almost as a last resort. As a matter of fact, whole families often relocate because there's nothing in the north.

What would your response be to that? Do you have any idea on how we might be more accommodating to folks in northeastern and northwestern Ontario?

Mr Mackay: I appreciate this is a real problem for some families. I live in Milton and there are a number of families that live there precisely because of the E.C. Drury School that's located there. I think that to the extent we possibly can, provide choices for families; that is, a choice of attending a school which is designed specifically for those students or the choice of trying to integrate into another classroom in their home area. I'm not sure what the answers are, given the fiscal constraints that we all know we're operating under. I hope the results of the current review go some way to dealing with that. There are other models, and perhaps if one of the other models was pursued, there could be opportunities to look at that kind of thing. I just don't think there's an easy answer to that one.

1050

Mr Martin: The recommendation made in the review I chaired over the last couple of years was that there be some provincial school presence in the north. Right now any provincial school presence comes out of the south and into the north and back home again, and we ship our

kids down. I guess you've probably already answered that question.

Have you given any thought to what that kind of presence might be, given the fiscal constraints that we're under and the geographic limitations? I don't think it would be conceivable to begin to develop or build a provincial school, for example, in northwestern or northeastern Ontario. The expense would be quite large. Maybe you've already answered this, but have you given any thought to any other model or way of delivering service in the north other than what's there now?

Mr Mackay: I don't know of any other considerations outside the reviews that are going on to serve these students from the north. I personally don't have any other suggestions or ideas that we could pursue to help those students.

Mr Martin: But you would be open to that discussion?

Mr Mackay: Yes, certainly. The ministry and whoever will continue to have responsibility for those schools will have to continue to deal with that question.

Mr Curling: Mr Mackay, thank you for coming before us. Your work and your ability are well known. I presume now to all three governments. You have worked with all three governments.

Maybe you could help me, because I am trying to understand this as I go along. Maybe you could just inform me what is happening. As I notice here, in 1975 they said the amount of teachers in that area in which you are was almost 750 or 749, somewhere around there. Today that number has been reduced considerably, almost to half or less than half, to 305. With things in place now to identify people with learning disabilities and define people who are blind and who are deaf—it's much more sophisticated now to identify that—I'm quite concerned that therefore students in those areas will have grown in numbers but teachers have decreased. Is there anything being done now to increase teachers? With all these cutbacks that are happening, do you find it's affecting that area dramatically?

Mr Mackay: I can only speak from my experience during the short time I've been sitting in on these joint employee relations committee meetings. It's my understanding that the small reductions that are taking place or are planned to take place in the teaching staffs, say for the next school year, are based on declining student numbers and reduced classes. I don't actually have with me historical data with respect to enrolment levels and teacher levels to have an idea whether the ratio has significantly changed. In your reference to the fiscal difficulties that we're all faced with, if there has been a reduction for reasons other than a reduction in the number of students, I think that must be the explanation.

Mr Curling: You may be right. You are more familiar with those statistics, but it concerns me, though, that as I visit most of the schools, teachers are telling me they're identifying more people with disabilities. So I thought that would be growing. I know there's a decline in enrolment overall, but I didn't realize it had such a great impact on those people within that area. Am I

understanding that you are saying there's also not only a reduction in enrolment but a dramatic reduction in those people with special needs? Because we want those special-needs teachers to be there.

Mr Mackay: I believe there has been some reduction in the number of students at the schools that are run by the Provincial Schools Authority, that is, the ministry's schools for the deaf and blind and the demonstration schools, which are the ones that relate to the Provincial Schools Authority.

Mr Curling: I have no other questions. I just want to wish you all the best in your endeavours.

Mrs Witmer: We're quite happy with Mr Mackay's appointment and the responses he's given and we have no further questions.

The Acting Chair: Thank you, Mr Mackay, for being with us today. I sense that the brevity of the questions is a tribute to yourself.

PAUL FOURNIER

Review of intended appointment, selected by official opposition: Paul Fournier, intended appointee as member, St Lawrence Parks Commission.

The Acting Chair: Thank you for being with us, Mr Fournier, and thank you for being early. We would offer you perhaps half a minute or so just to introduce yourself, say a few words and then the committee members will ask you questions.

Mr Paul Fournier: My name is Paul Fournier. I am a lawyer practising in the city of Brockville. I live on the Thousand Island Parkway, which is about 15 miles west of the city. I've practised there for almost 30 years. I have had a fairly good record of public duty, providing my services to the public over the years. I know you have a résumé in front of you which indicates that. I was asked to submit my name for this position by the chairman of the commission and have done so.

Mr John C. Cleary (Cornwall): Welcome to the committee, Mr Fournier. You had mentioned your CV. I browsed through it and I was very impressed. I am sure that as a former alderman and as a member of the chamber of commerce and many other groups, you will have the same interests that we have as elected people. I know in eastern Ontario there is a lot of concern about some of the things that are happening at the St Lawrence Parks Commission, especially the closed parks.

This government says it supports partnership with the private sector to boost tourism and I would like your views. We have private investors who are ready to inject capital into those closed parks. I know many have been into my office. They want to hire students. They have a deadline to meet for this year as of April 1. If something doesn't happen, it's going to be difficult. They want to employ students, which we need so badly in our part of eastern Ontario. They want to pay the parks commission a percentage of revenues. We have very high support from the municipal councils, the chambers, the united counties and the public at large.

I have some difficulty with those parks being closed, because just last year I was called out to the entrance to the parks where we had OPP officers turning tourists

around. They couldn't get into the existing parks and I have a lot of difficulty with that. I guess I would like your views on the situation, sir.

Mr Fournier: First of all, I have to tell you that my knowledge of the workings of the commission as such is quite general and I certainly do not have enough detailed information to deal with that question specifically. In general, the comments you have made are quite reasonable. I think it's quite a reasonable proposition that if we have parkland, it should be used for that purpose, all other things being equal. However, I would wish to be more fully informed of the considerations related to those issues, which I must admit I'm not prepared to deal with.

Mr Cleary: I'll just tell you, Mr Fournier, that I'd be delighted to send you a package of material on the background and the investors who are ready to invest money. I have before me a letter here. I understand the minister has put Dan Waters, parliamentary assistant, in charge of getting those parks opened and some of the issues at the St Lawrence Parks Commission.

I have a letter here dated October 5, last year, from a Mr Roger Haley, who was very supportive of getting these parks open. To my knowledge, there isn't anything being done with Dan Waters and the minister on this, because we've had municipal councils, we've had lots of support, we've had private investors up here, and absolutely nothing has happened. I find that very, very difficult.

I've got a lot of rambling to do here, but I want to briefly tell you and then I'd ask for your comments. I understand from what I've heard that successor rights could be a problem. We've researched the situation on two of these parks and it's my understanding that all the employees who were there are accounted for at the moment and all working who want to work except possibly two. So that's a pretty lame excuse for me. I'd just like your comments.

1100

Mr Fournier: I certainly appreciate that you're putting forward probably one of the most significant issues that's outstanding at the present time. I repeat to you, however, that my knowledge of the details of the working of the commission is not adequate to deal with that question. I expect that if I am appointed to the commission, that will be one of the major issues we'd be digging right into. That would be my position in any case.

Mr Cleary: Do you think when you're on the commission, and I'm sure you will be, because I think you'll play a valuable role there, you would consider this one of your priorities when you get there?

Mr Fournier: Yes, sure, I would.

Mr Cleary: I'm going to mention that a few other things you may face that I face weekly are some of the complaints that we have, and I'm sure you will have them too shortly, that the commission has been downsized by approximately 150 workers where management has only been reduced by two.

Mr Fournier: I guess the obvious inference is that management should be looked at as well.

Mr Cleary: We're also told from numerous visitors I get in my constituency office that the commission management shifts people around or reclassifies to avoid layoffs.

The other thing that you're going to be hit with is leasing vehicles that are leased on a year-round basis and only probably used six months of the year.

Mr Fournier: If that is all there is to it, it certainly sounds very wasteful and I certainly wouldn't support that kind of procedure.

Mr Cleary: I guess you get to the dollar on everything any more; that seems to be the bottom line. We understand that visitors dropped from 260,000 in 1988 down to 190,000 in 1993. I know you were a former alderman, and the other committees you've been involved in. What do you think would be the best way to get that attendance back up? You must have some idea on promoting eastern Ontario. I'm sure you do.

Mr Fournier: That's a pretty difficult question to answer, sir. I would attribute some of those numbers possibly to the economic situation of our country. However, in so far as promoting tourism is concerned in specific programs in those areas, I really can't offer you anything.

Mr Cleary: Do you think there are any other roles the private sector could play in the parks commission?

Mr Fournier: I read in the supporting material that the Chrysler Park area had possibilities for certain private partners in the waterfront development and the dockage facilities there. I'm not personally aware of those facilities, but if there is an opportunity for a private partnership which would be positive, I would support that.

Mr Cleary: As a new member, I'm sure you—anyone who goes on a committee, as I have many times, always has a bit of an agenda, some initiatives you'd like to pursue.

Mr Fournier: I can't tell you that I'm full of great aspirations or have any preconceived notions about how I will serve. I think I have the capacity to provide some leadership, and, as in all community services such as this, there is quite a demand for some positive leadership at this time because of many of the issues you've mentioned yourself. I look forward to that challenge.

Mr Cleary: And I'm sure you will do a good job. You said one of your priorities would be to try to get this issue resolved on the closed parks. I know we could bring in a lot of visitors from out of this province. I've been in contact with many from Quebec who would like nothing better than to come into Ontario and lease these campsites at the Raisin River park, which is a beautiful park. It's been abused as it is because it's been used by the smugglers; there's been a lot of damage. I find it unacceptable that an agreement can't be worked out to get those parks open, and I have to lay some of the blame on the government. There's got to be the political will to do it. Dan Waters is in charge of that, and I was hoping he would be here today. I'm really disappointed he's not.

Mrs Witmer: It's a pleasure to have you here, Mr Fournier. I'd like to take a look at the issue of visitors and tourism to this province. Obviously, that's one of the things we'd like to see increase, but things such as high

prices and taxes are certainly having a negative impact. Would you comment on the impact of those particular factors, the taxes and the prices, on the number of visitors and the income that might be obtained? What could you do to make the parks more attractive to the tourist?

Mr Fournier: Again, I don't think I can give you a specific answer. I agree with you that possibly the attendance at the parks has reduced because of the cost of travelling and entry etc to the parks. I'd certainly have to examine more detail of how the parks actually operate and any ways it could be made more open to people from a cost point of view.

Mrs Witmer: Do you have any suggestions as to cost-effective measures that could be introduced? Is there anything specifically that would come to your mind?

Mr Fournier: I haven't got the detailed knowledge that would be required to answer that right now.

Mrs Witmer: What originally led to your interest in this particular commission?

Mr Fournier: I live in the Thousand Islands Parkway, first of all. It's logical, I suppose, that I'd be interested in the parks. The chairman of the commission called me and asked me if I'd be interested in putting my name in. It's as simple as that. I have no particular agenda, as has been referred to, nor have I a lot of detailed knowledge of the way the parks operate.

Mrs Witmer: I do have the impression that you're quite willing to learn what has been done and become involved in further discussions.

Mr Fournier: Yes. I think the issues are quite typical. I'm sure I understand the issues, and I appreciate there's an urgent need to deal with them. I intend to do so.

Mrs Witmer: Do you see an expanded role or an additional role for the private sector to play?

Mr Fournier: The brief information I have suggests that the private sector is interested. Because of the difficulty of management and the cost of operating these parks, it seems logical that if the private sector could be included, if it could add some efficiency, if it could add some new lustre to what's going on, it might help in making the parks more inviting to the public. Therefore, the numbers would increase and the efficiency should increase and use of the park should be expanded.

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Mrs Witmer: It's unfortunate that some of the parks have been forced to close in past years and that I guess we're going to see an increase in that happening in the future, because for many people they do provide a form of recreation, an inexpensive form as well. Is there anything you would particularly like to pursue? Is there an area of interest, any policy initiatives you feel you'd like to get involved in?

Mr Fournier: I'm just going to pick up on what's been said and tell you that I don't think in principle that it's a good idea that the parks are sitting there idle. I certainly think that is a top priority. That's one issue that's publicly known, for sure. I'm sure there are other issues relating to cost preservation and efficiencies that would be maybe a second item. Third, it looks like some new dynamic should be inserted into the program, and if

the private sector is prepared to participate on a proper basis, that's another kind of thrust I could entertain.

Mrs Witmer: Thank you very much. I wish you all the best in this endeavour.

Ms Harrington: Thank you, Mr Fournier, for coming all the way from Brockville. I'm particularly interested because I know what a beautiful part of the country that is. I'm sorry Mr Waters is not here with us, because he is with the Ministry of Tourism and it would be really appropriate to hear his reply or questions to you.

I grew up in Brockville. Actually, my wedding reception was right there, near Mallorytown. I think it's Rockport, by the Thousand Islands bridge.

I want to talk about two things, first of all, the vision for tourism and for developing that part of the country. I now represent the city of Niagara Falls, and our government is very much involved with tourism in our area and also across the province, trying to bring tourism into a new partnership with the private sector and bring tourism into a new era, especially in the Niagara area, so that we link together the divergent partners. We have the Welland Canal system, the historical battlegrounds and of course the scenic areas and also the entertainment part of tourism. Normally, entrepreneurs in the past just looked out for what their particular business was without, sometimes, linking together and really having a vision for what the visitor wants.

Your role in this commission, similar to the Niagara Parks Commission in my area, is very important. As you know, the Niagara Parks Commission was formed 100 years ago to protect the natural beauty, the public interest of the citizens of Ontario. Now we're looking at the private sector as well.

You may know that the Niagara Parks Commission makes money for the province of Ontario. Obviously, the St Lawrence Parks Commission does not, according to the statement I've seen. I wanted to go into the finances as well as the vision. According to this, it's \$14 million in excess, expenditures over receipts. First of all, does that money come from the public purse of Ontario to cover those expenditures?

Mr Fournier: I assume it does.

Ms Harrington: I assume it does too. Financial restraint is what's been happening. We've heard that in terms of parks being closed. We're talked about how you could be cost-effective as well as enhance what you have there, which is a natural treasure. What are your suggestions for making something cost-efficient and yet developing those lands?

Mr Fournier: All I can really do is re-emphasize the two or three points made earlier. It's indicated that some new initiatives should be taken. The introduction of private sector partners sounds like a logical type of initiative. In terms of the view you've expressed of a more global approach to the entire area, why it isn't as cost-effective as other areas evidently are and the entire tourism partnership between all the private sectors and the public sectors, if that is not being examined and being considered, it certainly should be.

Ms Harrington: I see eastern Ontario and the

Cornwall area as a gateway to the province, and that should be developed. The whole Seaway parks area is a ribbon which introduces people to the province, and hopefully we want them to stop and enjoy it, not just travel right by. I think the commission has to look at, how can you generate more revenues, and how can you work together with other attractions in the area for the motorist to stay there or as a destination? Have you any suggestions about generating more revenues?

Mr Fournier: Not as such. It's just that the opportunity seems very significant for partnerships with the private sector I'm aware of, the boat lines and the various private activities that go all along the St Lawrence River, as well as the connection between Canada and the United States. There are a lot of complementary activities, from a tourism point of view, that go on there every day, particularly in the summer. There are a lot of logical reasons this should be a very dynamic tourism area.

Ms Harrington: You don't feel it is dynamic?

Mr Fournier: I don't know why it isn't being recognized in dollars and cents. To the general public it looks very dynamic, but maybe there's something wrong.

Ms Harrington: You really have a treasure there, and I'm hoping you could extend it to more of a year-round thing. I know Dan Waters is specifically interested in snowmobiling and how much money that can bring to communities.

The Acting Chair: Thank you very much, Mr Fournier, for being with us, and for being early. We appreciate the fact that you answered all the questions that were posed to you.

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PERRIE RINTOUL

Review of intended appointment, selected by third party: Perrie Rintoul, intended appointee as member, Huronia Historical Advisory Council.

The Acting Chair: Mr Rintoul, perhaps you could just indicate your name and a brief introduction, and then each of the caucuses will have some questions of you.

Mr Perrie Rintoul: My name is Perrie Rintoul. I've been a long-time resident of Huronia in Midland, Ontario. I've been a history teacher at Midland Secondary for something like 27 years. I know the area quite well, that is, the old area of Huronia, not just the area which the Huronia advisory council will be dealing with: Sainte-Marie, and now Discovery Harbour, which has taken the place of the naval and military establishment.

I have had a fairly broad background in history. I've done considerable reading in that field, and I have taken students on many trips, not only to Quebec and parts of Ontario but also to the United States, so I'm familiar with the problems and the requirements in doing that.

Mrs Witmer: Welcome, Mr Rintoul. You certainly appear to be eminently qualified to sit on the advisory council, as I take a look at your background. What do you expect from this appointment to the advisory council? What would you hope to be able to achieve?

Mr Rintoul: I haven't been very much involved with activities there, but it seems to me that the council is

moving very dynamically. Everybody in our own community is stirred by the great festival we're having on the Great Lakes which will involve Discovery Harbour, and certainly the historical advisory council will be greatly committed to activities in that respect.

Mrs Witmer: When is that?

Mr Rintoul: Discovery Harbour? That is the new name for the naval and military establishment at Penetanguishene. From what I have heard, revenues are going up, interest is very, very strong. It seems this area is being very rapidly developed and the community's pretty well satisfied with what's going on.

Mrs Witmer: That's great. So it appears there is an increased interest, as far as the tourist is concerned, in the area?

Mr Rintoul: Yes.

Mrs Witmer: It's quite well marked when you're travelling up some of the roads, and there's always been a long-standing interest, particularly among the school communities. That's excellent.

Is there anything in particular you would like to focus your attention on? What priorities do you have for the council?

Mr Rintoul: There might be some lands that might be developed more for tourism, but I don't know too much about that. I know some suggestions have been put forward that some wood technology for boating could be developed in the area. It seems to me that with the use of some of these lands, probably more people could be involved in that aspect.

Mrs Witmer: What is your assessment of the present program at the parks? How is it viewed by the community? Is there good community support for the Huronia Historical Parks?

Mr Rintoul: Yes, I would say so. The community looks very positively on what's been going on.

Mrs Witmer: What type of interaction is there between the program and perhaps some of the youth activities, the school communities? Are there programs available?

Mr Rintoul: There are programs provided, and all kinds of guides and interpreters for moving children about the place.

Mrs Witmer: Do they have anything in the way of a summer week program for children?

Mr Rintoul: I could not say for sure. That's something I would be able to find out.

Mrs Witmer: That's one of the things that's being developed in other parts of the province. My own daughters participated in those type of programs, where you have children going to a park and perhaps for five days they have the opportunity to learn about the history and what have you.

Mr Rintoul: It wouldn't surprise me if there was a program. They've had winter programs, I know, live-ins and that sort of thing. We have the Wye marsh just next door and it has all kinds of programs relating to the students in school at every level.

Mrs Witmer: What type of time commitment do you

envision would be involved in sitting on this advisory council?

Mr Rintoul: I can't see at the moment—though this is a different kind of year—a great amount of time being spent. Being retired, I have plenty of time and I'll do what's necessary.

Mrs Witmer: So you don't have any preconceived special interest? You're just there to do the best possible as a member of the advisory council?

Mr Rintoul: Yes. Until I get in and see what might be done, I can't really say definitely what direction I would like to see us go.

Mr Robert Frankford (Scarborough East): Welcome. It's a very interesting part of the world you're dealing with that really reflects some important parts of the province's history, the English, French, the Catholic traditions. I note with interest that the Jesuits have the right to appoint someone to the board, which is interesting and certainly reflects the historic reality.

Just an observation: I also think it's very interesting how those assets—and of course, as you mentioned, you have the Wye marsh nearby as well—can be used in community economic development. I find that a very interesting concept. Tourism is part of it, but I don't think it's the whole part. Perhaps you can make an observation. As a resident of the regular community there, do you find that tourism has or could have any adverse impact on the quality of life?

Mr Rintoul: I don't know how far down the road it would, but I can't see it having much at the moment. It's having a very positive influence right now.

When you think of our community with the three heritages there, and of course as new people come in we'll have the multicultural heritages, I have always been pleased with how these various groups have got along together. It always has made me very, very hopeful about the future of the country that here in this little area we've had French and English and Catholic and Protestant, and if they had a lot of very difficult times in the past, those tensions have been considerably removed.

Mr Frankford: I can see how that can work, that people are aware of their heritages in the area. I think, if I'm understanding correctly, that it all relates to people's everyday lives. I'm thinking of perhaps the other extremes. I don't know if you've read about Disney's latest proposal in Virginia, which is being forced through and is getting huge grants from the state, the sort of economic blackmail by major corporations that we're living with more and more. It sounds as though this is quite alien to the local culture and history.

Mr Rintoul: Yes. I don't see those pressures mounting yet. I don't know about down the road, but I certainly would not want to see that kind of crass tourism or commercialism come to dominate in our area.

Mr Frankford: Right, and although the board you're on doesn't really manage things, it certainly gives you a forum to express any concerns.

Mr Rintoul: That's correct, yes.

Mr Frankford: There has been this name change to Discovery Harbour from the Historic Naval and Military

Establishments. As a neo-traditionalist myself, I rather liked the old name. Do you have any thoughts on the change?

Mr Rintoul: I agree with you, yes. Discovery Harbour seems to be a shorter name for the general public to be able to absorb.

Mr Frankford: It sounds like condominiums to me.

Mr Rintoul: Historic Naval and Military Establishments seemed to a number of people too much to mouth, and Discovery Harbour, well, there's a sense of adventure to it and perhaps it relates to what goes on on the water. I think this may be an area that wants to be emphasized, that there are going to a lot of ships in there and perhaps there will be the making of wooden boats of the old period. So Discovery Harbour seemed to some to be a fairly apt name.

Mr Frankford: But the other one, I think, has a very nice historical reminder.

Mr Rintoul: That's right, and that is something one should be on one's guard about, these historical names being passed over.

Mr Frankford: Yes. There's this press release about it which seems to have been written in the PR industry somewhere, which is not for everyone, I think.

Ms Harrington: It certainly is an interesting place. If I remember correctly when I visited there, one of the interesting things that one could do was to take a canoeing trip down the river in a historic mode and pretend it was 200 years ago.

I notice here that you are an advisory body, which means you don't actually run it; the Ministry of Tourism, Culture and Recreation runs it. Do you know how much it costs the ministry to run this operation?

Mr Rintoul: I couldn't say. I've seen some figures but I wouldn't be able to recall them.

Ms Harrington: We have been given some figures here as to the revenue that the operation generated from the years 1987 through to 1993, and it has increased dramatically, which means you're very successful. It's gone from \$179,000, which would have been about six years ago, up to almost half a million dollars this past year. Obviously, you're doing something right. The attendance has also almost doubled in that period.

Mr Rintoul: Yes, and the prospects are great too for doing even better.

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Ms Harrington: On behalf of the government of Ontario, I hope your revenues do keep increasing, because you know we are under difficult circumstances. Also, I hope you will enhance the historical nature of what you have there and interpret it to our modern society, because I believe that tourists now want more culture and history, not just to come and go swimming or whatever. I trust that in your operation you will take care of what you have been given there.

Maybe I should ask you what your vision might be to change any particular aspects. What would you do to improve things?

Mr Rintoul: To my mind, what has been done so far

seems to be the right way to go about things, but there are some avenues that I would like to explore further, to see if maybe we've missed something or somebody has missed something. Perhaps we can involve more people in the local community in making this even more a historical area. I don't know to what extent the native peoples can be involved more fully in this.

Ms Harrington: Basically, creative thinking is what brings these new ideas and experiences forward for tourists.

Mr Curling: I too would like to thank you for coming in. I don't have very many questions, but I want to seize this opportunity, because when I look at your background here, I see there are many things we could have what we call good tea discussions on.

But let me ask you this still: Ontario has been changing so dramatically in its culture and the diversity of the people who are coming. I get a feeling that this rich history that we have in Canada and Ontario can be shared much more aggressively, if we use that word. Do you feel that way? Because there is so much to teach our new Canadians who are coming in about Canada and its history. Somehow I don't think that it's emphasized enough or pursued aggressively enough. What's your comment on that?

Mr Rintoul: I would agree with you that we have much to do in opening up our past to more people. Some of us grow up with a certain history, historical background, with our parents and grandparents and so on having lived in this area for so many years. But we have to open it up to all these new people who have been coming into the country so that they can absorb some of these things which some of us accept just because we have lived around here for a long time. I think we can do an awful lot more that way.

Mr Curling: In my experience too I have seen—it's so sad, because sometimes I don't even want to comment on that—that as soon as we talk about history or have someone speak publicly about something about North America, we go to the United States. The other communities too seem to tap those resources south of the 49th parallel.

Canadian studies, for instance, as you know, are starting to be done very much in the schools and in post-secondary education. There is a sort of downside to that. Is there any strategy that you feel we as parliamentarians could help to push that cause, so to speak? Because I think, then, your job—not that I'm going to make it any easier, but more exciting if we reach out more. Are there things that you think we could be doing here that could help that kind of cause?

In other words, I'll give you a quick example. In the past, we had passes to go to many places. Gradually, because of the press and the publicity attached to that, they took away all these passes and said that those are all junkets and what have you and that we shouldn't have that. I remember even at Ontario Place, a beautiful place, if it was crowded they would say, "There's no parking for you, for members of Parliament."

I'm not advocating that we should get all these fringe

benefits, but I find that when members of Parliament lead, because we are leaders in the community, and go to these things, people follow. Gradually I see that many of these passes are taken away and the interest, even within here, I find, dies. Would you advocate for things like that, that more should be done, that we should be visiting more of these places, seeing them first hand?

Mr Rintoul: Yes, very definitely. There is one area I always wanted to take classes to and somehow never seemed to get very much support. That was to take students into the north, into northern Ontario, to let them see how people worked in the old days to develop the mines in Timmins and South Porcupine and these places, to let them know something about the hardships that people had in opening up these areas. But as you were saying, we tend to go to the places which have colour. I'm very fortunate. I'm in an area of Ontario which is of that sort; it has a colourful background. But what has happened to the north as far as tourism goes with respect to education? I don't think very much. How many students have ever gone down a mine, for that matter?

Mr Curling: The community colleges, and I'd hope that in your position here we could advance some of those initiatives, Seneca College, for instance, had a program called the MILE, the mobile intensive learning experience. It took those students away. They used to go very far, to Tuktoyaktuk and all over the place. I'm telling you that the transformation that happened to those young people when they came back and were telling others was just tremendous.

Maybe I'm just re-emphasizing what I said before, but somehow if we can start to generate that kind of interest, people can be instilled with what is Canada, and especially the new Canadians, what it's all about. It's hard for them to project Canada when nothing else is giving in. We target on some of the things that are, I would almost say, not as important as what I see this to be.

I thank you for coming and thank you for serving on this. With the kind of experience you have, I think you will make a great contribution to this board.

Mr Rintoul: Thank you very much.

The Chair (Mrs Margaret Marland): Mr Cleary?

Mr Cleary: Good luck.

The Chair: Thank you for your appearance before the committee this morning, Mr Rintoul.

Mr Rintoul: Thank you very much.

The Chair: That is the end of our opportunity this morning to speak to our four appointees. We would need a motion, either for all of them or individually, at the choice of the committee. Mr Cleary?

Mr Cleary: Just one comment: I have before me here a public appointments secretariat document, St Lawrence Parks Commission, and I didn't want to confuse the issue when Mr Fournier was here, but it says the responsibilities for his position are, "The commission maintains and develops a series of parks along the St Clair River and Lake St Clair to complete a scenic drive from Chatham to Sarnia along Highway 40." I find that a little bit confusing.

Mr Frankford: That was a typing error.

The Chair: The researcher will take note of that.

Mr David Pond: No, it's not my responsibility.

The Chair: Oh, I'm sorry. I beg your pardon. I didn't mean to blame the researcher.

Clerk of the Committee (Ms Lynn Mellor): The error was corrected.

The Chair: All right. That is so noted. Thank you for your comment.

Do we have a motion for approval?

Mr Frankford: So moved.

The Chair: Dr Frankford is moving the appointment of Joan Tingley as a member of the Ontario Film Review Board; Bryan James Mackay as a member and chair of the Provincial Schools Authority; Mr C. Perrie Rintoul as a member of the Huronia Historical Advisory Council; and Mr Paul Fournier as a member of the St Lawrence Parks Commission.

All in favour of that motion? Opposed, if any? That motion is carried.

Just before we adjourn, I wanted to welcome Mr Gary Malkowski as a new member to our committee. We will look forward to your participation, Gary.

Mr Malkowski: Thank you.

The Chair: It's a pleasure. We have a subcommittee meeting. We'd appreciate whoever is sitting on that today for the three parties staying. There isn't any other business, so the committee will be adjourned, and I thank Mr Johnson for taking the chair this morning for me.

Mr David Johnson: My pleasure.

The committee adjourned at 1140.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Conway, Sean G. (Renfrew North/-Nord L) for Mr Bradley
Johnson, David (Don Mills PC) for Mr McLean
Martin, Tony (Sault Ste Marie ND) for Mr Waters

Clerk / Greffière: Mellor, Lynn

Staff / Personnel: Pond, David, research officer, Legislative Research Service



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Third Session, 35th Parliament

Assemblée législative de l'Ontario

Troisième session, 35^e législature

Official Report of Debates (Hansard)

Wednesday 30 March 1994

Standing committee on government agencies

Draft reports

Ontario Human Rights Commission

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Chair: Margaret Marland

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Journal des débats (Hansard)

Mercredi 30 mars 1994

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Wednesday 30 March 1994

Mercredi 30 mars 1994

The committee met at 1010 in room 228.

DRAFT REPORTS

The Chair (Mrs Margaret Marland): Good morning, members of the committee. We will start our meeting of the standing committee on government agencies, and today we are dealing with the draft reports on those agencies which we have previously reviewed.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair: We're going to start with the Ontario Human Rights Commission draft, and I think what we'll do is have our researcher take us through it, unless the committee has any other wishes. Would you like the researcher to take us through the draft report?

Ms Margaret H. Harrington (Niagara Falls): Yes, thank you.

Mr David Pond: This is the first go-round for this agency, so, as I said when you assigned me this task, this is all tentative language which of course is subject to your approval or change.

The first seven pages are simply a lead-in which I've lifted from the original briefing paper on the Human Rights Commission. It just provides a background to the issues the committee dealt with during the testimony. So I'll go right to page 7 and the heading halfway down the page, "The Testimony of the Commission."

The first section of this, following your instructions, lays out the initiatives and the reforms introduced by Ms Brown at the commission, her eight organizational initiatives. They are described on page 7, page 8, page 9 and the top of page 10.

At the top of page 10, at the conclusion of the description of Ms Brown's reforms, under the bullet points, I've listed the results of her reforms and the progress the commission has made in streamlining its procedures and cutting down its backlog.

I draw your attention to the two paragraphs in the middle of page 10. The committee instructed me to do two things: One, indicate that essentially the committee was pleased with the approach taken by Ms Brown, that under her direction the commission was on the right track, that it was making progress in addressing the issues which have been raised over the years by various studies and reports and that essentially, generally speaking, the committee was impressed with the efforts of the current team. That's the first paragraph starting, "The committee was impressed by...."

However, the committee also decided, if you recall, that it should look at the reforms and the critiques proposed by some of the witnesses, and you asked me to

describe the reforms proposed by the witnesses which could build on the existing framework of change introduced by Rosemary Brown.

In that light, the next section, "What the Committee Heard About the Commission," describes the testimony offered by witnesses who deal with the commission, such as CERA, ARCH, Mary Eberts, a well-known lawyer, and other interest groups who have been affected by the commission, the Canadian Manufacturers' Association, the Fair Rental Policy Organization of Ontario, and that's it. That goes on from page 10 through to the top of page 14. That again, I hope, is a fair description of their experiences with the commission over the last three or four years.

As I mentioned a second ago, you wanted the report to focus on reforms proposed by the witnesses which were workable, which built on the existing work being done, hence the heading "Reforms Proposed by the Witnesses" on the top of page 14. What I've done in this section is organize sort of the observations, suggestions for change proposed by witnesses which were more or less compatible with the existing policy framework.

They're organized by theme because, as you know, many witnesses came back to the same themes over and over again. Actually, before we get to that, I should read out this paragraph because this language was proposed by some of the members, to draw your attention to it:

"The committee believes Ms Brown and her colleagues have made a commendable start in tackling the backlog problem. Members agree that the challenge ahead for the commission is to learn how to use its existing resources (which in the present economic climate are not likely to increase) more efficiently, in order to target the more important cases, provide expeditious justice to complainants and reduce the backlog."

That paragraph contains the points that some of the members directed me to put into the draft report.

Proceeding to "The Jurisdiction of the Commission": You recall many of the witnesses came back to the point, over and over again, that the commission had an ambitious view of its jurisdiction and was constantly trying—this is the witnesses alleging this—to expand its jurisdiction and that this was one of the root causes of the backlog or case load management problem.

Russell Juriansz, an employment lawyer who had worked at the Canadian Human Rights Commission, now in private practice, actually used the phrase "jurisdiction-hungry." This came up a few times, and as a practising lawyer he had several examples of policy areas where he

felt the commission was deliberately expanding its jurisdiction beyond that which it could handle effectively.

You'll recall that the testimony of the Fair Rental Policy Organization, FRPO, was largely devoted to this issue. It felt the commission had taken on essentially what it regarded as social issues, such as the minimum-income controversy, which were better dealt with by the Legislature in the form of amendments to the Human Rights Code. That's page 15, moving right along, and all of page 16.

At page 17, as you directed, I summarized the proposals from the witnesses which would address this alleged problem. That's the bullet points on page 17, so I draw your attention to that. With the bullet points on page 17 there is essentially a summary of all the recommendations made by witnesses dealing with this particular point.

I think we've got a question from Ms Harrington.

The Chair: Ms Harrington, did you have a question, or do you want to wait till he's finished?

Ms Harrington: I was going to wait till the end, but this is right at the beginning.

You read that paragraph on page 14 which says, "Members agree that the challenge ahead...is to learn how to use its existing resources...more efficiently, in order to target the more important cases, provide expeditious justice...and reduce the backlog."

To me, that is very clear and straightforward, but it doesn't quite jibe with page 10, which you referred to. Halfway down the page it says, "the witnesses suggested that efforts by commission staff to eliminate the backlog were adversely affecting the integrity of the commission's investigatory procedures." I have a problem with the word "integrity" of the procedures.

Mr Pond: Okay. No problem.

Ms Harrington: Maybe we can discuss that further at the end.

Mr Pond: Absolutely.

Ms Harrington: I just had a problem with that line.

Mr Pond: Okay. No problem. I hear you and I've marked it. Shall I continue?

The Chair: Any other questions?

Mr Daniel Waters (Muskoka-Georgian Bay): I apologize for not picking up on it, but I had a couple of things that I was a bit concerned with on page 17. As we go through it, I'd like to discuss the time, whether indeed, if it's some of the latter bullet points—undue hardship, how you deal with that, and a number of other things. I recognize at this point that we're just going through it, David, and it's probably better that after you go through it all, we come back. But I would like some further discussion on 17.

Mr Pond: Okay. I'll continue and then we'll come back to that if you like, sir.

Page 18: Another theme regularly addressed by the witnesses, especially community groups that do work on behalf of complainants, was this notion that once a complaint is filed with the commission, the complainant loses carriage and the commission becomes the sole authority responsible for carrying through the complaint.

If you recall, many of the witnesses—in fact probably most of them—suggested there should be some kind of guaranteed right to a hearing so that complainants, given the right circumstances, could go right to a hearing. I hate to put it this way, but basically what they are suggesting is that essentially they could go around the commission directly to some kind of statutory hearing. You'll recall that most of the witnesses addressed this kind of reform to one degree or another, and on page 18 and the top of page 19, all I've tried to do is to summarize that testimony.

I don't know if you want to tackle that. It's up to you, of course, not me. I put this in here, of course, because this is a constant theme, as you know, in the testimony.

Just to finish that off, if you recall, Mr Juriansz, in the middle of page 19 here, issued a note of caution. He said it's impractical to guarantee every complainant a hearing, given the innumerable complaints the commission adjudicates every year. So his proposal and that of Mr MacKillop, another lawyer, was simply to strengthen the pre-hearing conference procedures that the commission is already using.

If you beef up the pre-hearing conferences and mediation techniques, you may be able to provide satisfaction to the complainants without guaranteeing them a full-blown, full-dress statutory hearing. But, as I say, this is something—you know better than I do—virtually all the witnesses came back to over and over again.

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Moving on, a related issue is the boards of inquiry. I'm now on the bottom of page 19, top of page 20. Many of the witnesses pointed out that there is also an alleged backlog at the board of inquiry level, which of course in strict legal terms is separate from the commission itself.

Mr Juriansz, at the top of page 20, suggested that really the existing board of inquiry should be beefed up: There should be a full-time board of inquiry; it should be larger; there should be full-time professionals sitting on the boards of inquiry. As you know, currently the boards of inquiry are ad hoc affairs, usually staffed by law professors who fit the hearings in between their classes.

I quote Mr Juriansz here. He says it's "nothing short of scandalous" that in 1994 there is not a full-time professional board of inquiry. He was very emphatic about that. In fact you will recall he said if there's one thing the committee should recommend, it should recommend that there be a full-time board of inquiry, once again to deal with this problem of backlog and case load management. Again, I'm your messenger here at this point in the report. I'm just outlining what you were told.

Following on, Mr Lou Ronson, a former vice-chair of the Ontario Human Rights Commission, suggested that the equivalent of a Small Claims Court be established with no more than three full-time commissioners sitting as a tribunal to adjudicate selected cases of lesser importance. This was his proposal to address the backlog, bottom of page 20.

Another theme in the testimony of witnesses was the role of community organizations. If you recall, many of the community organizations, the advocacy groups, that

appeared recommended that they have a greater role in helping complainants file complaints and even in processing complaints. I summarize their arguments on page 21 and the top of page 22.

If you recall, Ms Brown on her second appearance before the committee actually addressed this issue. I summarized what she said for you on the middle of page 22. She pointed out that community groups already work closely with the commission in the development of policy—not the adjudication of complaints but the policy. She pointed out that under the existing law the commission does have the sole legal responsibility for adjudicating and carrying complaints. She pointed out that the investigatory and adjudicative processes are supposed to be neutral. To allow community groups that inevitably have their own perspective on life to get involved with the commission at that level, you might compromise the perceived neutrality of the commission. So you have two points of view here: You have the points of view of the community groups in this issue and you have the point of view of the chair of the commission.

Those are the themes in the testimony which arguably more or less build on the existing structure, which conceivably could be introduced without necessarily radically revising the entire commission.

The next section, the bottom of page 22, "Structural Reforms," outlines some changes and some observations which might conceivably require a more ambitious overhaul of the commission. Several witnesses, Brian Shell of the Steelworkers and Mary Eberts, argued that essentially the government and the commission should be focusing more on systemic discrimination. If you shifted the focus to systemic discrimination, the number of individual complaints over time would decrease, you address the root causes of discrimination. Their proposals are on page 23 here.

Page 24: If you recall, many witnesses argued that the commission tries to do too much. It plays too many different roles: It's an adjudicative body, it's an investigative body, it's a policy body. Many witnesses, both community groups like CERA and employment lawyers like Mr MacKillop, argued that one body couldn't do everything and that there was inherent conflict of interest between these roles.

If you recall, employers, for example, or employers' representatives, who appeared before the committee argued over and over again that, as far as they were concerned, the commission was biased. Ms Brown would reply: "Well, no, we're not. We're neutral when we investigate complaints." Essentially, they're arguing at cross-purposes. When employees were arguing that the commission was biased, they were referring, whether they realized it or not, to the commission as a policy institution.

You've heard some of the examples they raised: the proposal about the minimum-income rule for landlords; the case about pornography in corner stores. Those are policy issues the commission deals with which are institutionally distinct from the adjudication of individual complaints. I think what's happening is that many employers are merging the two in their minds. I think the

complaint is, "We don't trust the commission when it makes broad statements about policy and therefore we don't trust them when they come into my workshop to adjudicate an individual complaint."

Many witnesses argued that essentially you should break up the commission: You'd have one body dealing with the broad issues of systemic discrimination, for example—that's the most common example—and you'd have another kind of institution dealing with the adjudication of individual complaints.

I'm now on the top of page 25, the second bullet point. Mr Ubale, who's a former member of both the Human Rights Commission here and the federal Human Rights Commission, essentially argued that Ontario should adopt the British model. In the British model you have tribunals which hear all employment-related complaints, and then you have a central bureaucratic body which deals with the larger issues such as systemic discrimination. He argued that's the route we should follow in Ontario.

Of course, the most ambitious proposal for total change is the Cornish report, which I address on pages 25 and 26. If you recall, we had Mary Cornish before the committee. In 1992 she released the report, which is a total, global view of the Human Rights Commission. Virtually every witness addressed it to one degree or another, either positively or negatively or somewhere in between. The committee agreed at its last meeting that, whether or not it agreed with every detail of the Cornish report or whether the government agreed with every detail of the Cornish report, the witnesses who are out there in the community waiting for a response to the Cornish report deserved a formal government response. Hence the black bold type on the top of page 26:

"The committee therefore recommends that the government of Ontario should formally respond to the Cornish report." That was recommended at the last meeting.

To continue, under the heading "Other Issues" on page 26, this section summarizes other issues which the committee addressed during its brainstorming session in February, if you recall. The first one was employment equity. Several members of the committee want this committee to recommend that the Employment Equity Act be implemented as soon as possible. Hence the italics at the bottom of page 26. Mr Curling's one of them. He's not here today but, if you recall, he wants the committee to recommend that.

On the top of page 27, several members discussed the makeup of the commission currently. Ms Brown herself "indicated that the commission needed more members who were bilingual," to conduct hearings in French, and that it was also actively "encouraging the first nations" of Ontario to suggest a member "to sit on the commission." During the brainstorming session, several members suggested that if the commission was to win the confidence or keep the confidence of various community groups, including employers, then those groups had to feel that the commission represented Ontario society. The example given was that currently only one out of the 10 commissioners is actually an employer representative on the commission. So I put that in there, once again, just to flag that for you.

Recommendation number 2, two thirds of the way down the page in bold, was recommended by some members of the committee at the last meeting.

Then there was a discussion about whether commissioners should be allowed to stay on. As you know, there's sort of an unwritten rule now in Ontario that appointments to agencies, boards and commissions should have two terms. One member of the committee, who's not here right now, suggested that it seemed a bit of a shame that when you had commissioners on for six years, by that point they were well along the learning curve, they were probably experts on the subject and at that point they had to go off the commission. So one member of the committee suggested—this is at the top of page 28, the third recommendation in bold—"The government consider reappointing commissioners for more than two terms when deemed appropriate."

The next issue kicked around by the committee was the accountability of the commission, if you recall. Some members felt that consideration should be given to having the commission report directly to the Legislature instead of through the government, on the grounds that the commission was an adjudicative body and because some of the complaints filed with the commission were directed against the government in various of its manifestations.

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Finally, the last issue, "Administrative Reform": In her speaking notes for her appearance here, the minister pointed out that plans were well under way to merge the administrative infrastructure of the Pay Equity Hearings Tribunal, the boards of inquiry under the Human Rights Code and the new Employment Equity Tribunal. She pointed out in her speaking notes, but she didn't actually get a chance to put those speaking notes on the record, that eventually the government was looking at significant cost savings, sharing of professional experience among adjudicators, that sort of thing, as a result of this initiative. Some members of the committee suggested that in this report the committee should note these efforts and commend the government for moving in this direction. That's it.

Mr Allan K. McLean (Simcoe East): I appreciate him taking us through the report. It certainly brings us up to date and enlightens us on some of the hearings that we held. I'm wondering how we're going to handle these. We have three reports today, and some of our critics are not here. Mr Curling is not here; Mr Cousens is not here. I'm wondering if we should go through the three reports like we have this one and then let it go back to our caucuses and come back and then try to deal with specifics. We could get into specifics this morning on any one of these and go on and on and on. I'm wondering if we shouldn't let our caucuses deal with them and then come back again. I like the way he took us through this one, and I'd like to go through the other two the same way, so that gives us a little broader view of it.

Mr Waters: Is that in the form of a motion, Mr McLean? If not, I'll make the motion. I have no problem with that.

The Chair: Normally, I think that what we do is, we have the presentation of the draft reports, we ask ques-

tions—you, being the committee members, ask the questions—and then they are taken back to your own caucuses for review and then you come back with changes or recommendations and the final discussion for the final report. So we should perhaps talk about a time line for when we would expect to bring these back to our researcher and then in turn look at receiving a final report.

Mr McLean: I would suggest that within a month I think the subcommittee could probably deal with that and try to come up with a morning to deal with one or two of them anyway. I don't know.

Mr Waters: If I might be so bold as to suggest—next week is taken up with certificates, right?

The Chair: Yes.

Mr Waters: Why don't we bring this back the week after, with the intent of at least dealing with one or two, getting down as close as we can to the final report that morning?

The Chair: April 13?

Mr Waters: Yes.

Mr Steven W. Mahoney (Mississauga West): I don't know if this is accurate or not, but I understand that the government is going to be announcing a royal commission on workers' compensation perhaps as early as today. That's the rumour in the halls here. Many of these recommendations that are here may well wind up going to such a royal commission but many may not; many may be seen as being pulled out and dealt with in relationship to the PLMAC, the Premier's Labour-Management Advisory Committee, which has also reported.

So perhaps with the workers' comp issue on here it would be appropriate to give it maybe as much as three or four weeks before you actually bring it back to committee. But I think it would be important that it does come back, because there are a number of recommendations that may well become documentation for the royal commission if indeed the Premier announces the formation. If they do not call a royal commission, then it would be equally as important to be dealt with in some recommendations to the government. So some delay in dealing with this might be quite appropriate today. I don't know about the other two as much.

Mr McLean: I would have thought that probably just the opposite may have been true. Maybe we should have dealt with this first, in two weeks' time, in order to have some input. If there's going to be what you're talking about, a commission set up, maybe dealing with it first would get it off our agenda and on to the commission's.

Mr Mahoney: The commission is going to take about three years, I believe; I don't know too many that report much quicker than that. So whether you deal with this in two weeks—I'm happy either way. I just think it's important that we recognize that there are other things going on with regard to workers' compensation. In fact, I myself will be releasing a report around the middle of April which might or might not be of interest to members.

The Chair: Do you have the rumour answer, Mr Waters?

Mr Waters: What I might suggest is what Mr McLean originally suggested to us, that we go back and look these things over within our caucuses. We had looked at coming back not next week but the week after, and at that point we can make the decision whether to go on with WCB or indeed let it lie where it is if there is such a commission.

The Chair: I would think after the work—

Mr Waters: I can neither confirm nor deny the rumour, because I know nothing about it.

The Chair: No.

Mr Waters: I've been with Resorts Ontario.

The Chair: I was only pulling your leg when I said that. I think because of the sincerity of the work that's been done by the committee on all these three agencies, it's important to complete our reports and say, "This is what we think as a result of our work." If there happens to be a further examination of the Workers' Compensation Board, then it would just be a complement to that.

We may, on the 13th, not be able to deal in depth with the input from the caucuses on all three reports, so you may want to prioritize which reports you deal with on the 13th. Does that sound reasonable?

Ms Sharon Murdock (Sudbury): It sounds very reasonable.

The Chair: If we deal with them on the 13th in the same order as today, and you want to get the WCB report off in a direction, if there was going to be a commission, you might want to start with the WCB on the 13th.

Mr McLean: Madam Chair, I would probably make a suggestion that if we did the food terminal one first—I think it's going to be the simplest, the easiest and the quickest—and get it out of the way, then we can probably do the WCB on the same day, or start it at least. But I think the food terminal is the one that we can get out of the way easily.

The Chair: Okay. So on the 13th we'll do the food terminal, the WCB and then the OHRC and, depending on how much time, whether or not we get to the third one on the 13th. Dr Frankford?

Mr Robert Frankford (Scarborough East): I was really going to concur, because I thought that the food terminal was a relatively straightforward one and should be got out of the way.

The Chair: Yes. So do we need a motion that this is how we're going to proceed?

Clerk of the Committee (Ms Lynn Mellor): Is there agreement?

The Chair: There's agreement. I don't think we need a motion. There's an understanding. Did you want to say something?

Mr Waters: All I was going to say was that on Mr Mahoney's concern, I believe that on the 13th we can deal with that concern. If indeed the rumour that you're hearing is correct, then obviously it wouldn't be a rumour by then. At that point we, as the committee, would have full knowledge of what's going on and we'd be able to deal with it.

The Chair: Are there any further questions on Mr

Pond's report? None? Okay. Thank you, Mr Pond. We'll release you.

SUBCOMMITTEE REPORT

The Chair: Now we'll have Jerry Richmond. While Mr Richmond's coming forward, we have a subcommittee report. Could we have adoption of that subcommittee report, please?

Mr Waters: So moved, Madam Chair.

Mr Mahoney: Do you need me for the vote?

The Chair: Yes, we need a Liberal. All in favour—

Mr Mahoney: What does the report say, before I vote on it?

The Chair: The report is the selection of the people who will be coming before the committee, and we had a Liberal member on the subcommittee as part of that.

All in favour of the subcommittee report? That's carried.

Ms Murdock: May I just ask a question, Madam Chair? We're going to be going through each of these reports this morning?

The Chair: Yes.

Ms Murdock: So the workers' comp report from the researcher will be done after we're finished the food terminal report?

The Chair: Yes, definitely.

Ms Murdock: Thank you.

Mr Mahoney: I'll be back for that one.

Mr McLean: It may not be long.

Ms Murdock: I did that for you, sir.

The Chair: I thought you did, Sharon.

Ms Murdock: I didn't want you to miss out on a thing.

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ONTARIO FOOD TERMINAL BOARD

The Chair: All right. Would you like to take us through it, please, Jerry.

Mr Jerry Richmond: Thank you, Madam Chairman, members of the committee. David did such a good job that I'm just going to follow in his footsteps. He was the top of the batting order, I guess, to use baseball terminology.

You've got the package of material. The food terminal report is the second one. If you undo the big, black paper clip you can just take it out. The covering memo is self-explanatory. What I've done in the report is attempt to reflect the background information and representations that were made to the committee before. I've reflected to the best of my ability the previous deliberations of the committee and taken into account the correspondence between Mrs Marland and the Minister of Ag and Food.

Just a notation there—the clerk will receive confirmation on this—we believe that the name of the Ministry of Ag and Food has changed. They've added in Rural Affairs. Lynn will be receiving some confirmation from the ministry, and if that is the case, we will make the necessary adjustment in the text of the report. That's just a housekeeping thing. There's one reference still in the

report to Ag and Food, but we will make it consistent.

Over the page, in the covering memo, it just outlines that the report is organized in two parts. Pages 1 to 9 include background information that's very similar to the material that was presented to you earlier in my background paper on the food terminal. The second part of the report, pages 9 through 27, includes commentary on the issues which were discussed before the committee and also includes draft recommendations, of which there are some 16.

Now, in some cases, when you look at it, the recommendations are presented to present you with alternatives, to give you some sense, depending upon the direction the committee wants to go. I just want to indicate that to you, that you may want to pick and choose some of the recommendations. There may eventually be debate or consensus or otherwise. As David indicated, none of these recommendations are carved in stone. It's up to the committee. They're merely suggestions that I've attempted to reflect the earlier discussion and put some material on the table for you to consider.

Moving into the report itself, page 1 is pretty well self-explanatory. It's very close to what was presented to you earlier. The first paragraph is a general description of the food terminal and its location in Etobicoke on a site of almost 39 acres. We did visit the site. The food terminal opened in 1954. The second paragraph just highlights the previous committee discussion of the food terminal, and any further meetings—it appears that there will be a meeting on April 13. Reference to that will be added in here later. Moving down the page, that just highlights that the report reflects the various background materials and deliberations of the committee.

Over the page, the sentence in italics is just for your guidance in the draft. It reiterates that the report contains several alternative recommendations. That will be removed from the final report. That's just a notation for the committee's benefit.

On page 2, the background information, the history that was presented to you earlier: It reviews some of the debate in the Legislature in the late 1940s when the Ontario Food Terminal Act was passed and when the decision was made to establish a food terminal.

On page 3, you see some excerpts from the Hansard debate by the Minister of Agriculture of the day that gives you some of the rationale as to why the government made a decision in the late 1940s to establish a food terminal, and there's some additional descriptive material on the expansion of the food terminal, capital improvements that have been undertaken over the years.

At the bottom of page 3, I move into the section which highlights the food terminal act and the supporting regulations. These were distributed to you earlier and they were discussed. That just highlights some of the basic provisions in the statute, such as a seven-person board that, as you know, is appointed by order in council.

Over the page, on page 4, it just highlights the function of the food terminal to essentially operate a wholesale fruit and produce market. It highlights some numbers, the number of growers and buyers who patronize this facility.

Similarly, it highlights some other pertinent sections of the enabling statute and just highlights the two regulations, regulations 871 and 872, that are adopted pursuant to this statute.

Over the page, on page 5, this reiterates the purpose, objectives and general operation of the food terminal, some excerpts from the annual report. Down the page, towards the bottom of page 5, other key supporting documents submitted to the committee and relating to the food terminal are highlighted, the latest annual report is highlighted, and some of the financial figures.

Over the page, on page 6, the corporate plan which was discussed is highlighted, and some of the capital projects and improvements that were anticipated. It gives you a sense of those that have been completed and those, like the parking deck extension, which are still to be undertaken.

The middle paragraph on page 6 highlights the farmers' market task force report that came out in 1992 and its suggested major recommendation, to restrict the farmers' market portion to essentially Ontario-grown produce. That issue was discussed and reference to it is made later.

At the bottom of page 6, the memorandum of understanding between the minister and the food terminal board is highlighted.

Moving over the page, on page 7, the middle section there, I recall that Dr Frankford, I believe, asked a question pertaining to this. This highlights the four previous reviews since the late 1970s of the food terminal board by committees of the Legislature. I have those detailed reports back in my office; I would gladly Xerox the details.

Mr McLean, and I believe you also, Madam Chairman, were involved in some of the earlier reviews. One of the major issues discussed over the years was the perpetual leases, and you see reference to that. At the bottom of page 7, there's a quotation from a 1988 report of this committee that reiterates the committee view at that time on the perpetuity clause provision in the warehouse leases, and that quotation may indeed reflect the position of the committee today.

The Chair: That was the 1988 report?

Mr Richmond: Yes.

The Chair: It made a lot of difference, didn't it?

Mr Richmond: The leases and a copy of a sample warehouse lease were distributed to you, where you can look at all the legalese. The leases were first granted in 1954, with this perpetuity clause. The rationale was to encourage growers and buyers to move to the food terminal, which was sort of out in the sticks in those days, from a downtown location near the rail yards.

The perpetuity clause ran for 30 years. It was renewed in 1984. The perpetuity clause is in there again, and you see the quotation in the middle of page 8, to the year 2014. The commentary on the next page reflects some of the earlier debate and the debate of this committee over the issue of how you can get around the leases, and there are various legal and economic complications.

The bottom of the page makes reference to the earlier C unit project that was contemplated by the food terminal and, due to market conditions, was cancelled in 1990. This project anticipated, on the south end of the food terminal property, building some additional five or 10 warehouse units. Because of a lack of market interest, this project was cancelled in 1990.

If this C unit project had gone ahead, the expectation was that these units, if they were rented, would not have contained a perpetuity clause.

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Mr Waters: Your first full sentence on top of page 9 reads, "The OFT retained the deposits made in the case of these cancellations." They never returned them to—

Mr Richmond: My understanding is, from Mr Carsley's testimony, there is some court action in connection with that. I believe I recall the senior board people mentioning that one of the tenants is disputing. I could expand on that.

Mr Waters: No, I just wanted to make sure indeed that I was reading that the way—

Mr Richmond: That's my understanding. I can phone Mr Carsley and just reconfirm that, but that certainly is my understanding.

Mr Waters: Okay. Thank you.

Mr Richmond: Moving on, the second part on page 9, these are really the issues that the committee discussed and this contains the draft recommendations. I guess the major issue that was presented to us, primarily at the behest of the food terminal representatives, was the issue of the need to update the food terminal act and the related regulations. This is a major issue that was reiterated in various documents and in the presentations by the food terminal reps before us. The commentary there merely reflects that.

Then, at the bottom of page 9, there's a bullet point list of the issues as presented by food terminal board officials, the issues that they felt should be addressed in any update of the act and the related regulations. That merely highlights the earlier deliberations of the committee.

Then there is some commentary over the page, the second paragraph, some suggested lead-in wording there towards the recommendations. This reflects the deliberations of the committee, where I certainly got the sense that the committee seemed to prefer, rather than a complete rewrite of the act—and I remember Mr Marchese going on the record—giving some direction that you would want the food terminal board and the ministry to look at policy changes, procedural changes, possible changes to regulations before you got into a full-blown, massive, total review of the act.

If you read those draft recommendations in the paragraph above, the second half of page 10, that's my attempt to wrestle with that and put before you some recommendations. Unless you want, I don't propose to read the recommendations. I would suggest that if you read them, they should be self-explanatory. If you want me to read them, of course.

Those are for your consideration. So 1(A) is one of the

recommendations. The second recommendation addresses the issue of preparation of conflict-of-interest guidelines to apply to the food terminal board. That's a suggested approach to that.

On page 11, the alternative text and recommendation, that's an additional point that could either be an option or an addition. You could either delete that or you could include it; it could be an additional point. After the food terminal board and the ministry address the first two recommendations, you may want to suggest that down the road they may want to address a full-blown review of the act. That's sort of an option, and you can deal with it as you will.

Unless there are questions, I will move on to the next section. I would suggest that when you read that through, it's probably self-explanatory.

The next issue is the update of the food terminal's corporate plan. They do have one and it was distributed to you for 1992, 1993 and 1994. The text indicates that there are a number of capital improvements, like the parking deck extension. We saw the parking deck when we toured the facility. It covers the farmers' market. There's been consideration to extend it. That has not yet been undertaken, and there's the issue yet of a market for cut flowers. So you see some of the commentary there that addresses those issues.

The recommendations, over the page, are suggested draft recommendations of proposals for the committee. If you should choose to make recommendations on this matter, they're there for your consideration. It makes a suggestion with regard to the undertaking of the parking deck extension and another recommendation directing the Ontario Food Terminal Board to prepare a new corporate plan. If there are other issues you wish to put on the table, certainly these are not cast in stone. Unless there are questions, I will move on to the next section.

The next issue I've addressed is the recommendation of the farmers' market task force essentially to restrict the produce brought into the farmers' market to only Ontario produce. This recommendation of the farmers' market task force 1992 report has not yet been addressed by either the food terminal or the ministry. The commentary reflects what this issue is all about; it reflects the debate of the committee, moving over to page 13. It's a complex matter, from both a policy and legal perspective.

There are really two alternatives, the first being that the committee would not make a specific recommendation, and you see the rationale on page 13. There were concerns about possible retaliation from other trading partners, both domestically and internationally. That commentary there leaves it as an issue for future consideration. The last proposed sentence on page 13 reads, "The food terminal board and the ministry...may...monitor the situation and hold further deliberations on this matter if conditions warrant." You identify it as a complex issue, but the proposal is that in this case, as an alternative, the committee does not really direct that or make a recommendation on that. That's one possibility.

When you look at the bottom of page 13, there's an alternative approach, option B, where the committee really accepts the position of the food terminal board and

this farmers' market task force of going ahead to attempt to restrict the produce sold at the farmers' market to only Ontario-grown produce. Over the page, the commentary continues and you see the recommendation that comes forward there, recommendation 5, that suggests that OMAF and the food terminal should move ahead to actually restrict produce.

You have the two alternatives. There may be others; you may want to mix and match. That's entirely at your discretion. Unless there are questions, I'll move on to the perpetual lease issue.

This issue has been discussed previously. It was discussed, as I mentioned, by previous committees. The text reviews the current situation and some of the complicating factors, and some of the earlier discussion. On page 15, it says the board indicated that it has a policy now that "restricts the number of warehouse units that may be held by one company to three." That reflects some of the earlier committee discussion.

The options: If you read through the text, the commentary reviews some of the complications, legal and financial, and when you move over the page there are the draft recommendations, and the commentary would lead into this. Recommendation 6 proposes that the food terminal board monitor the situation and seek, wherever possible, to take over the leases if lessees should surrender them, and take advantage of any other opportunities where tenants may be amenable to voluntarily surrender the lease or where businesses may otherwise give up the leases. That sort of reflects the status quo.

Recommendation 7 suggests that the board monitor market conditions, and, if market conditions warrant, monitor them every five years; and consider reactivating the C unit proposal of building additional warehouse units that would be rented on a non-perpetual basis.

Those are the possibilities I could think of. Someone else may have others. You could buy them out, but that, as we know, according to the legal and evidence presented to us, would probably cost a fair bit of money.

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Moving on, unless there are questions, at the bottom of page 16 I address the issue we touched upon: the possible privatization of the food terminal. The commentary mentions the case of the quasi-privatization of the Ontario Stock Yards, where they've been closed and the land is going to be leased, with the proceeds going towards a livestock industry trust fund. That's a privatization of a sort of agricultural facility.

The commentary mentions that there was some consideration of privatization during the previous Liberal regime. There was a trip to a food terminal in New York City that was privatized. This reflects the presentations of Mr Carsley and the other board people. The text goes on and reiterates the potential value of a 39-acre site within the city of Etobicoke.

The commentary then reflects the materials provided by the ministry, that the food terminal performs its original mandate, and reiterates the importance from a jobs and economic perspective, spinoff jobs and the like, of the food terminal operation in the agricultural com-

munity within Ontario. Some of the other figures you see on page 18.

There are two alternative recommendations, 8(A) or (B): 8(A) recommends that the food terminal board be retained as a self-sustaining public agency; 8(B) suggests some approach to a possible feasibility study of what I've termed options to privatize. Those are some possibilities, and the committee can wrestle with those. If there are no questions, I'll move on to the next section.

The next section deals with the implications of the social contract on the food terminal and relates to a letter that was tabled before us, correspondence of August 19, 1993, by Mr Ireland, a letter to the Premier, that from the board's perspective they claim the terminal should not be under the coverage of the social contract. During testimony before the committee, the food terminal board people indicated that this correspondence had been referred to Mr Laughren.

In terms of possible recommendations, you have (A), (B) and (C) in this case: (A) is where the committee would say yes, the food terminal board should be under the social contract, (B) says it should not be required, and (C) leaves it up to the government and the food terminal board to resolve. I don't know how deeply the committee wants to get involved in this. Those are the three possibilities I could think of. Once again, I leave those for your consideration.

Impact of the recession is the next issue, on page 19, and this is merely a text where I review some of the facts and figures on the traffic going through the food terminal, review some of the previous legislative changes on page 20, and some market developments in the wholesale produce industry. The upshot of this is essentially a commentary, on page 21: "Following its tour of the terminal the committee came away with a generally favourable impression of the terminal's operation." You can see the rest of the text, and the final point is, "The terminal appears to be maintaining its position as an important component of the wholesale produce trade in Ontario." It's merely a commentary. There are no recommendations proposed here. It merely reflects the situation, the debate of the committee and the material presented and tabled with us.

The next section reviews—and I think we reacted favourably during the tour—the conservation/waste reduction program instituted by the food terminal. Once again, it's a review of some of the facts and figures presented to us, that through its 3Rs efforts the food terminal has diverted some 6,700 tonnes of waste from landfill and this has saved the board some \$1 million. You see some of the other initiatives that are contemplated, and the commentary makes reference to the access by the food banks to the food terminal. The draft recommendation on page 22 essentially commends the board for these efforts and encourages further efforts in these areas. That's the proposal there. Unless there are questions, I'll move on.

The next section reviews—and this issue was discussed and we certainly saw what I guess I would characterize as the underutilized rail siding and covered rail dock at the food terminal facility. Over the years, in the late

1940s and early 1950s, railway shipments of produce dominated, and over the years truck has come into prominence. The board officials indicated that only some 50 rail cars a year still come to the terminal. The commentary reflects the underutilization of the rail facility.

Recommendation 11 proposes a feasibility study to really look at the dual use of the rail dock area—not that it would be closed, but that the food terminal consider alternative uses; if a boxcar or refrigerated car of produce should come in, the rail track would still be there, but that in the interim they look at alternative uses.

Recommendation 12: I happen to be a bit of rail buff, and from reading some of the literature, you get the sense, rightly or wrongly, that CN and CP are emphasizing their north-south cross-border services. They've increased container and piggyback services. Recommendation 12 proposes a meeting of the affected parties to look at making increased use of the rail facility. You could add that the use of railways might be regarded as environmentally friendly, that they probably use less energy than trucks. This attempts to address that, where a meeting would be convened involving the ministries of Agriculture and Transportation and the two major railways to see if there's a possibility to increase the rail-shipped produce to the food terminal. Those are possibilities.

The next issue is workplace safety, which was addressed lightly by the committee. There's just a brief commentary. We did receive some information from the food terminal board indicating that this is a priority. The recommendation over the page, on page 24, merely suggests that they should continue these efforts.

The food terminal itself doesn't have a large staff, less than 40, 30-something, but of course at the food terminal there are forklift trucks and dollies and everything else running around with the tenants and buyers, so there is the potential for injury. This commentary reflects that.

The last issue the committee addressed, and Dr Frankford and Ms Carter were involved in this, was the issue of inspection of food for grades, pesticide residues, and the issue of irradiated food was also mentioned. The food terminal officials and the chair indicated that the terminal acts as a facilitator. It does provide access to the appropriate agricultural inspectors, who do sample the produce and send it away to testing labs. The commentary merely reflects this. However, and this reflects the testimony, it does not appear to be a direct matter that's under the purview of the food terminal board per se, so the text merely encourages the food terminal to continue providing access to the inspectors. Then the last sentence: "Since the matter of produce inspection, grading and sampling is outside of the direct mandate of the food terminal board, the committee has not put forward specific recommendations in this regard."

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That's what I've prepared for you. If there are any questions, I'm certainly more than—

Mr Mahoney: I apologize, because I obviously wasn't part of the committee discussions on this, but several years ago, during the time we were in office,

there was a proposal by the food terminal to build some additional storage space at the food terminal site. There were plans drafted and they went to the existing tenants, not necessarily the leaseholders. There are a number of people, as I'm sure you know from this report, leaseholders in the Ontario Food Terminal, who are nothing more than coupon clippers, who never go near the place, who in some cases have never even seen it. It's been passed on as part of a will within a family and they simply get a cheque every month from the people who actually sell the produce.

These leases came up for sale and there were actually some that changed hands, I believe, if my figures are correct, in the neighbourhood of \$3 million or \$4 million cash up front to buy the right to take over the lease for one of these establishments. There is an awful lot of money involved in the Ontario Food Terminal from the private sector's perspective.

The board felt it should create new spaces and it identified some area where it could build new spaces. They drew up plans and indeed went to a number of the tenants, who were not the leaseholders but were the subtenants for the leaseholders, and offered them an opportunity to submit a bid. Many of them did. In the case of Greg Vetere, a constituent of mine whose family, for some 26 years, his father before him and his brothers and sisters, operated Vetere produce in this place—I forget the exact name, but it was Vetere groceries or something like that—put up \$70,000 to acquire one of the new stalls that were going to be built by the board. They paid this money as a deposit, and so did a number of others.

The board then went through the process of doing up the architectural drawings and setting aside the space, and I believe, if I'm not mistaken, actually built an expansion to the cold storage. But they never did build the stalls where they would actually sell their produce. Mr Vetere chose not to buy the lease, for \$3 million or \$4 million, on the facility he had been operating in for some 20 years, because he just couldn't justify the cost, nor could he come up with the money, and he was clearly led to believe by the board that he could buy one of the new stalls and he put up his \$70,000.

The bottom line is that they never built the stalls, they refused to give the money back—

Mr McLean: It's in the report we just finished.

Mr Mahoney: I'm sorry, I wasn't here. I said I apologize if I missed that. I just wonder if there is some recommendation the committee might have.

Mr Vetere is currently embattled in a lawsuit with the ministry. Everybody says we can't deal with it because it's a lawsuit. Well, it's not in the courts. It's gone lawyer to lawyer. It's very bitter. I think this man has been shafted. He's lost his family business. He's lost the deposit he put down. He's incurred tens of thousands of dollars in legal fees.

I think it's one of the most incredible injustices I've ever seen. It's not a partisan thing, because the leases were set up during the Conservative regime, and it was during our regime that this project was supposed to have

been built. In fact, Mr Vetere was heavily involved with Mrs Grier on this matter, who was very familiar with the issue when we were in government and you were in opposition, and was quite sympathetic.

The Chair: She came to the committee.

Mr Mahoney: Did she? Well, the bureaucrats now are doing exactly what they did when we were in government: putting the blinkers on and keeping the minister away from it, for some strange reason. I apologize if I'm going over stuff you're all very familiar with, but I have not been part of the discussions here and I wonder if anybody has any ideas about how we might settle this thing, for Greg Vetere or for anybody else who's caught in this trap.

Mr Waters: Mr Mahoney, page 9. Actually, I hadn't spotted it before when I read through, but it stood out as we went through this morning. It's right at the very top of the page.

The Chair: Also page 16.

Mr Waters: I made a quick note in the margin for when we get into our deliberations: "Is this proper procedure?" I find it incredible that you put a deposit on something and the project is cancelled and the person holding your deposit gets to keep your money. I don't understand how that can happen, in the public sector or the private sector. I really have a problem with that. Between now and the time we come back in two weeks, I intend to ask the ministry for some further comment on that. I think it should be a major part of our discussion, that it has to be at least ferreted out by us as a committee.

The Chair: Are you going to ask the committee to ask the ministry?

Mr Waters: That's probably a better procedure. I would recommend at this point, and I think I would have the support of my colleagues from the other side, that we ask the ministry to give us an in-depth background on all of this, how this could happen.

The Chair: Do you want them to come?

Mr Mahoney: I think we should have them here.

Mr Waters: I can't see the need, necessarily, to have them here. Let's see what they have to say in writing first.

Mr Mahoney: The answer I have received in attempting to deal with this—and by the way, when I've gone in to talk to some of the ministry staff, everyone seems sympathetic. Everyone says, "Oh, this is unfair," and reacts very much the way you've reacted, because it's common sense. But then the board takes the position that it incurred expenses in drafting up architectural plans and things of that nature, and that these guys took their chances when they invested the money. They have settled with the others, as I understand it, for some lesser amount, a substantial reduction from the \$70,000; I think they settled for somewhere in the neighbourhood of \$20,000 or \$30,000 and kept the balance of the funds. They say it was offset by expenses they incurred and that these people should have known about it or something like that.

Frankly, the board stonewalls anybody attempting to resolve the matter. Part of the frustration—I don't know the current makeup of the board, but at the time I dealt with this, there was a member on the board who was actually a lessee—is that the right word?—within the facility.

The Chair: They were a tenant?

Mr Mahoney: A tenant, but actually owned the lease.

The Chair: A unit owner.

Mr Mahoney: Yes, actually owned the lease and therefore had a conflict, or certainly what I perceived as a conflict.

I'm seeing heads shake over there and I don't know what that means.

Mr McLean: On a point of privilege, Madam Chair: Are we going to get into the issues of each report, or are we going to do what we agreed to do at the start of the meeting: have them referred and come back and discuss them? If we're going to discuss them now, I want to be part of it, but if we're going to let Mr Mahoney go on with his concern, I have other concerns too, and we will do that. Or are we going to do what we agreed to start with, go on to the next one and deal with it?

The Chair: I think what's happened is that Mr Mahoney had to leave the room because of his own schedule, and that happens to all of us when we're in committee. He had to leave the room and he didn't realize there was some reference to this in here. He has flagged it for the committee.

Steve, you will be taking this back to your caucus. Mr Waters has agreed that maybe there should be some inquiry of the ministry about that particular point you've raised. If the committee wishes that to happen, if you give direction to the Chair, we will do that.

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The purpose is really that the researchers are taking us through the reports now. We'll take them away to our caucuses, and then you will come back to discuss them at the next meeting, which is April 13. If, on this particular aspect of this report, you do want—

Mr Waters: I believe we need further information to deal with this particular issue. Therefore, I recommend that through you, Madam Chair, a letter be sent requesting further information from the ministry and maybe from the board so we have something to deal with here. I have one or two lines, and I can't make a decision on that.

The Chair: Would you like us to write to the board and to the minister?

Mr Mahoney: I'm sorry I upset Mr McLean in taking time to express a concern, Madam Chair, but I'd be delighted if the committee would write those two letters to request some information.

The Chair: So we're seeking the status of this particular example you've given us, and if there has been any resolution to it. Is that about what you want the letter to say? All right, we'll do that.

Are there any other questions on Mr Richmond's report at this point? There are not, so thank you very much, Mr Richmond, for your presentation.

As I invite Mr Yeager to come forward to talk about the report on the Workers' Compensation Board, I want to explain to the members of the committee, if I might, that you've been handed a letter from the Ontario Human Rights Commission. I brought sufficient copies with me at the beginning of the meeting, but the name of the party hadn't been whited out, and I felt, because of confidentiality, that if I were going to circulate this letter I wanted to remove the client's name, for obvious reasons.

I would like the committee to read this letter when you're reviewing the report. The incredible ambiguity of this letter perhaps further reinforces something you might want to say in the report. I realize I can do this through my caucus, but as the Chair of the committee, in fairness, I wanted to share it with everybody. In this particular case, this individual has now been pursuing his case since 1988.

Do you remember that when the commission was before us, they talked about this new office of reconsideration? The letter before said, "Yes, we have a new office of reconsideration, but we don't yet know the date it's going to be implemented." Now we have this letter asking this man for more patience and understanding, and it's been since 1988.

In my 20 years in politics, I haven't read anything with quite the wording this letter has, and I wanted to share it with you for that reason. What you do with it is up to you, but I just thought it was a pretty interesting letter.

Mr Mahoney: You're awfully well preserved for 20 years, Madam Chair.

WORKERS' COMPENSATION BOARD

The Chair: Mr Yeager will now take us through this next very important report.

Mr Lewis Yeager: Thank you, Madam Chairman. If you all have your copy of the Workers' Compensation Board draft report in front of you, if you turn to the table of contents you'll see that the first half of the report largely draws on the briefing paper that was prepared by Rob Nishman before the first set of hearings. I've gone through it and taken out some of the less directly applicable parts on the appeals tribunal and things like that, tried to shorten it and clean it up a bit. It's a little longer than I would have written myself, but it's all factual information that has been reviewed by the committee and by the ministry, so it provides good background for anybody who might read this report.

Other than the introductory page, the only change that's significant relates to a section on benefits that I've added. If you'll turn to page 13, there's a brief section just describing the overview of the benefit system. I've added two tables, on pages 14 and 15, that are from the Workers' Compensation Board, which summarize, on table 1, the workers' compensation benefits and, on table 2, on page 15, the survivor benefits as currently in place. I thought it was sort of a hole in the report not to have that type of information available at all.

The main part of the report, derived from your earlier discussions, begins on page 18 in the "Discussion and Recommendations" section. The information is presented basically in the same order as we discussed it in the

previous committee meeting, and this was largely determined by Ms Murdock's presentation and notes which the committee adopted in terms of discussing these matters sequentially. I've added one or two small sections in that seemed to stick out and I've combined a couple of others, but basically the information derives from the notes provided to me by Ms Murdock and from the Hansards of the discussions that took place.

Mr McLean made a series of specific recommendations and Mr Curling and Mr Bradley also added several recommendations and discussions throughout the Hansard. So this section basically wrote itself and all of the recommendations were suggested by committee members. I didn't have to really add anything at this point. When I have a choice between writing something the long way and the short way, I usually choose the short way, so there's plenty of leeway to add further discussion in at any point you feel is appropriate.

I'll begin just by going through page by page what is here in a fairly overview manner. The first section relates to a memorandum of understanding and I've combined that with the general discussion of board accountability, which was the second topic that you discussed at the last meeting, into one section which begins on page 18.

With respect to the memorandum of understanding, the Provincial Auditor recommended that there should be a new one, and there was some discussion on it. But basically the first recommendation states: "The Minister of Labour should negotiate a new memorandum of understanding...with respect to delineating the powers of the board and providing an accountability framework for decision-making."

There was a lot of discussion about accountability at the WCB throughout the hearings and throughout the report-writing session that we had, and some members felt that more accountability by the board would improve governance and control.

There was considerable discussion about the practice of making political appointments to senior management positions at the board and that the board's management team might be strengthened by introducing executives from the insurance industry to perform these types of roles. Also, there seems to be some consensus building that if the board is moving towards more financial accountability, we have to look at whether we want a political person in that type of a position, regardless of how able he or she might be.

I think Mr Bradley made the point that, while it's a difficult question to eliminate anybody who has ever served in public office from these types of positions, a number of members thought that it was worth noting how important these positions are now in determining the position in which the board is going.

That led up to recommendations 2 and 3, number 2 being, "The Minister of Labour should end the practice of appointing former politicians to senior executive positions at the Workers' Compensation Board," and number 3, "The Minister of Labour should hire a qualified insurance executive to chair the Workers' Compensation Board and supplement the executive with an entirely new management team, also recruited from the

private sector." I believe that's Mr McLean's recommendation.

The committee members in general were of the opinion that the WCB should determine the cost of any new policies that it's putting forward for implementation to address concerns that had been raised about a lack of accountability and to ensure economy, efficiency and effectiveness in service delivery.

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The next three recommendations, 4 to 6, reflect those concerns:

"4. All new WCB initiatives in policy development and program delivery should undergo rigorous scrutiny to ensure clear objectives and built-in controls prior to implementation." That emphasizes the planning stage.

"5. The Workers' Compensation Board should enshrine the principle of value for money into the development and delivery of all programs." That introduces that concept clearly and was, I think, an auditor's recommendation.

"6. The Workers' Compensation Board should institutionalize the idea of good spending by establishing management responsibility for reporting performance, plans and budget and by conducting regular reviews to ensure adherence to stated objectives."

So 4 to 6 go from the planning to the operational to the review function within the board. I think these three recommendations came from different parties, but they do fit together nicely as a continuum from the planning right through to the actual in-house examination of performance.

The next major section relates to fraud allegations. The committee heard quite a bit of information about the types of frauds that have been occurring. There were various estimates of the magnitude of these types of frauds. The emphasis is on the types of frauds that are occurring, and these include medical suppliers, board employees, tax avoidance by employers and workers making false claims. These are the four basic areas that the board has been putting emphasis on.

Mr King provided a summary of what the board has been doing recently in terms of setting up a method of reducing frauds. Basically, he says that the compensation board now aggressively seeks to prosecute all cases of fraud and recover what has been lost.

The committee emphasized in the Hansard that it feels it is important at this time to send a strong message that fraud in any form will not be tolerated by the board or by the Ministry of Labour. Recommendations number 7 and number 8, on page 20, are intended to address that:

"7. The Workers' Compensation Board should immediately find ways to tighten controls on access to WCB systems" and "8. The board should conduct necessary research to identify business areas highly vulnerable to fraud and ensure that close monitoring of these areas and needed anti-fraud controls are implemented in a timely manner."

The next area that the committee addressed was their internal financial management. This was questioning internal controls within the Workers' Compensation

Board that had not kept pace with technological changes in the workforce. There were a number of comments that the actual presence of fraud in the system points to certain weaknesses in the board's internal controls.

There was considerable discussion by the committee about the controllership function that needs to be put into place to strengthen the efforts of the board to provide efficient and cost-effective service delivery. This might relate to authority and approval limits that need to be implemented; operation and financial compliance-related information has to be kept; in summary, members felt that the controllership function must ensure a proactive approach to remedy these types of weaknesses and encourage fast corrective action.

This resulted in recommendations 9 and 10:

"9. The Workers' Compensation Board should develop an internal financial management or controllership function to provide its employees with clear roles and responsibilities and assist managers to minimize waste and prevent fraud" and, under internal financial management, "10. The board should implement a package of administrative reform measures including value-for-money auditing and internal spending controls."

The next section relates to strategic planning at the Workers' Compensation Board, and Mr King outlined the strategic planning exercise that has been taking place and is now taking place at the ministry. The first paragraph largely discusses that process as described by Mr King and the eight issues which they were breaking down and looking at more specifically.

The committee members felt that it was important that a strategic plan be developed and implemented to ensure the viability of the WCB's service to its clients. As well, the committee expects the board to keep it up to date on its planning process, what the process is and how the board's progress in implementing these stated plans is occurring.

On page 22, there are two recommendations. The first is number 11, "The Workers' Compensation Board should provide the committee with its strategic plan as soon as it has been completed." You might want to extend that to revisions to the plan later on. Number 12 asks that, "The board should provide this committee with an annual written report of its progress in succeeding with these objectives." Basically, the committee is asking for both the plans that the board produces and discussion of the success of the plan's implementation on an annual basis.

The next section discusses vocational rehabilitation and return to work. I think everybody emphasized the importance of ensuring a speedy return to work for those who suffer injuries in the workplace. There are serious social costs of people not working and that places a financial burden on the system as well. Mr King mentioned that the first chief vocational rehabilitation officer the board has ever had was appointed in the summer of 1993, just before our hearings took place.

Coming out of this emphasis on vocational rehabilitation is recommendation 13: "The Workers' Compensation Board should emphasize measures in its planning process

which will promote vocational rehabilitation and foster an early return to work." That's rather a general recommendation. You may have suggestions for making that more specific.

The next section relates to corporate culture. Some members observed that the WCB's planning efforts now had employees involved in the decision-making process and that an ongoing commitment to this type of process was desirable. So recommendation 14 is, "The Workers' Compensation Board should continue to provide training to its employees and involve them in the decision-making process." That section may in fact fit better up above, after the planning process section.

Page 23 introduces the concept of Simcoe Place. This had extensive discussion of course by the committee, both here and in other committees, regarding many issues associated with the board's decision to become involved in the construction and ownership of its new headquarters, which will be known as Simcoe Place.

The committee reviewed the Provincial Auditor's comments on Simcoe Place in a special report that went to the standing committee on public accounts, along with the board's response to those observations.

Mr Di Santo and Mr King provided the committee with their views on the background of all these decisions and on the observations made by the Provincial Auditor, and of course answered many of your questions regarding almost every aspect of Simcoe Place's history.

Following those public hearings, though, some committee members continued to have substantial concerns about Simcoe Place, although they recognized that at this point final decisions had been made and the project would proceed regardless.

I was asked to follow up the public accounts committee's recommendation a bit, and the next paragraph describes what happened:

"The Provincial Auditor, in his report to the standing committee on public accounts, recommended that the WCB should report back to that committee in 1996 with detailed information on all costs associated with the relocation to Simcoe Place."

Specifically, "The standing committee on public accounts approved the following motion on 22 July 1993: 'That the standing committee on public accounts return to the issue of the WCB's new headquarters after the WCB has reported back to this committee in 1996 as per the Provincial Auditor's recommendation in his report.'"

Such a report was described as including the final rental rates and annual costs, total staff that is relocated, space occupied, projected rate of return on investment based on actual building costs, moving costs, leasehold and furniture costs and any administrative savings that have been achieved by the relocation and consolidation of the head office, such as staff reductions.

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The auditor also recommended that the board assess its long-term staffing requirements in light of savings possible from reduced claims, downsizing and automation and determine the effect this may have on space requirements.

Some of the members noted emphatically that such a financial review of Simcoe Place would have been more valuable before the decision to proceed had been made. Other members indicated that a thorough financial review in 1996 would still have usefulness.

This leads to recommendation 15 on page 24: "The Workers' Compensation Board should comply in full with the recommendations of the Provincial Auditor to the standing committee on public accounts which relate to the relocation to Simcoe Place and any associated cost savings." That was really the only recommendation that came out of our earlier discussion of Simcoe Place.

In the middle of page 24 a section on the financial position of the Workers' Compensation Board begins. Committee members expressed significant concern about the board's growing unfunded liability in an economic climate which has seen declining revenues for the board. There was a great deal of discussion related to the need for the WCB to develop a funding strategy which ensures the viability of an effective compensation strategy which protects injured workers while ensuring that employers remain competitive and viable in trying economic times. The board's vice-chair suggested that those sectors which have been hit the hardest by the recession—and these include manufacturing, resources and construction—make up about three quarters of the board's revenue base at present.

Some members suggested that rising premium rates are having a strong negative impact on existing businesses and are making Ontario less attractive for new business, investment and jobs. They attributed the debt, the cost and the shortcomings of workers' compensation to the fact that it has become increasingly regarded as an employer-funded social safety net rather than remaining true to its original concept as a workplace accident insurance plan. It was Mr McLean who suggested that the board has become a universal system to compensate everyone for almost anything.

So on page 25 there are two recommendations that relate to that aspect: the first, that "The Workers' Compensation Board should follow the lead of Manitoba and New Brunswick and change the 90% net benefit level to ensure claimants do not receive more in compensation than they would if they were on the job"; and recommendation 17, "The board should investigate some form of copayment by claimants to enhance accountability." Those, I believe, both came from Mr McLean.

There was additional discussion on many aspects of improving the board's funding strategy. Two other recommendations that came out of the Hansard are listed as number 18 and number 19 on page 25: that "The Workers' Compensation Board should develop a new funding strategy which addresses the viability of the system into the future"; and number 19, that "The board should conduct consultations with the workplace parties and provide a report to the Minister of Labour."

At the bottom of page 25 is a brief section on future coverage, which was mentioned several times. This might be fitted elsewhere into one of the larger sections, but it seemed to stand quite well on its own. The committee discussed the possible future extension of benefits to

cover such conditions as workplace stress. Some members noted that employers and many members of the public are concerned that the board is going to continue to expand its coverage to areas where there is a lot of controversy, at great cost to the system. Some members were unsure if the WCB can totally close the door on new areas of coverage but felt that a consensus is needed in the province before coverage is expanded at this time.

Two recommendations came out of your earlier discussions and these are listed on page 26. Recommendation number 20 is that the Workers' Compensation Board should commission an impartial evaluation of what services are provided and what services might be covered in the future, and 21, that the board should declare a moratorium on all new types of entitlements, such as stress compensation, pending a long-term plan to manage the board's unfunded liability.

That completes the draft outline of our report. I'd be happy to have any comments; I'm at your disposal.

Ms Harrington: A point of clarification: On page 20, the first recommendation says the WCB "should immediately find ways to tighten controls on access to WCB systems." It is not clear what you mean. I think we would all agree that workers need a decision in an efficient manner. It doesn't appear that's what you're saying.

Mr Yeager: This recommendation came from Ms Murdock's notes and I believe relates to more their computer systems and process systems that might be subject to access by somebody with fraudulent intent, as opposed to benefits being received by people or false claims and that type of thing. I was a little unclear myself. That comes word for word from the notes, and I'd be happy to clarify that.

Ms Harrington: So it refers to computer systems?

Mr Yeager: I think so—the technical process of dealing with things within the board structure and how any aspect of that might be vulnerable to any sort of mischief.

Ms Harrington: So that would have to be clarified.

Mr Yeager: I think it should be, yes. I stand to receive clarification myself on that because it wasn't discussed extensively in the Hansard.

Ms Harrington: Also, what that made me think of, that I would like to flag—I'm not sure if it's actually discussed in here—was the first decision of people who are going through this process is, I don't think, efficiently done because there are so many appeals. I don't think we got into that, did we, Sharon? I'm not sure whether we should be mentioning it.

Ms Murdock: If I might, just for clarification: It was discussed in another one of the standing committees in terms of the actual operations of the board, but in this committee it was discussed on a different level in terms of finance and the building and that kind of thing.

Ms Harrington: So you don't want to get into that?

Ms Murdock: I don't think it's part of this report.

The Chair: Obviously, with a review of this agency, there's no limit or boundaries as to what you can put in the report.

Ms Harrington: I just wish to say that maybe there should be a statement in here that we believe that claimants should have a swift and efficient decision-making process. Obviously that's a mandate of an organization.

The Chair: I think what you should do is bring that back to the meeting on the 13th because I think the purpose of going through the report now is if you have questions. Margaret, clearly yours was a question of clarification but I think the next step about what you'd like it to say would be part of the next meeting.

Ms Jenny Carter (Peterborough): I actually had the same question that Mrs Harrington raised about recommendation 7, but just to enlarge on that, under fraud allegations, it does say that there are problems with board employees, suppliers and physiotherapy providers and I wondered whether this includes all those aspects.

Mr Yeager: I think when it refers to systems, it's not referring to those types of frauds. It's speaking to internal manipulations within the board's processes. These are the four types of frauds listed on the bottom of page 19, but in a larger sense, the board is currently focusing its attention on its strategy to reduce fraud. One is on board employees and the systems I suppose would be most vulnerable to internal employees, but suppliers may be working the system in a larger sense.

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Tax avoidance by employers is another area where the system, in a larger sense, is affected, and the same with false claims. So these people are working the system as opposed to working the WCB systems internally, as certain employees of the board might have the opportunity to do.

So I think that we need improved wording for recommendation 7 to make it clear that it is talking about improving security on internal data banks and processes that might be subject to internal manipulation. At least, that was how I interpreted it, but that doesn't mean what people refer to as the WCB system being manipulated by any of these other things. Perhaps I can change the wording to not use the word "system" twice. It becomes confusing.

Mr Waters: Further to some of the members, if they refer to, I think, it's the resource development committee hearings that Ms Murdock was referring to, and we did that in 1991-92 and 1993 because we had said, "Do these things and come back and report," and dragged the WCB back a year or a year and a half after. If they looked at that, there would be a lot of recommendations in there about how the WCB deals directly with their client base because that was what report was based on. It was just strictly the client base and some inefficiencies there and recommendations. So it's out there. There's a lot of information and already reports over the last three years.

Mr George Mammoliti (Yorkview): I want to apologize for not knowing the report, I guess, as others do, and want to ask a question at this time in terms of the worker adviser office and whether or not this report touches on the worker adviser office, and if it doesn't, whether this committee has ever done that in the past.

Mr Yeager: The report does not touch on that office,

largely because it didn't come up in the earlier discussion. As with any other aspect related to it, the report can touch on it if the committee wishes to, and perhaps you could bring some of your concerns back to us the next time.

Mr Mammoliti: This is not what I was asking. It's not my intent at this point. I just wanted to get some information perhaps to dig into the books if this committee has ever talked about the office. If we haven't, well then obviously, there's no need to pursue it.

The Chair: I don't have the answer about what has been discussed in previous reviews of the WCB, is my direct answer to you, George. Obviously, it would take some research.

Ms Murdock: Resources development committee.

Mr Mammoliti: Maybe another committee.

Ms Murdock: Sorry, it's just that it's been my life for three years here, and I've been at every one of the committees where we have, during the life of this government, handled the WCB. The resources development committee has a report from that standing committee on OWA and on the very issue that Mrs Harrington mentioned, so that has already been reviewed by another committee.

The Chair: In fairness, it doesn't preclude you from addressing that area in this report, but obviously there's a tremendous resource document in the resource development committee's report, and you could find it in the library.

Mr Mammoliti: I'll try and get my hands on that report.

The Chair: Your staff can get it from the library.

Mr Mahoney: Just further on that particular issue, it seems to me that this committee would perhaps do well to take a look at the report that's being referred to before finalizing this report, because the WCAT, the worker adviser and the employer adviser, as well as the health and safety agency, rely on the WCB for their funding, so there's a very direct relationship. The Industrial Disease Standards Panel as well.

All of these things impact in the sense that they cost the WCB a substantial amount of money, so maybe at the very least the report should—because the PLMAC report recommends a different relationship with those bodies, and I think that's going to be quite controversial as to whether or not they are indeed independent.

If you think particularly in terms of WCAT, an appeals tribunal, I think the PLMAC report, recommends that WCAT sits on the board, one of the 15 members.

Ms Murdock: In the advisory committee?

Mr Mahoney: Yes.

Ms Murdock: I could be wrong, but I don't think WCAT is on that side. The IDSP, the OWCI, the OWA and the OEA are.

Mr Mahoney: They are actually. I've reviewed it. That's their recommendation, that WCAT actually sit on the board. I think that's a point that should be discussed, whether it's this committee or whatever, because if an appeals tribunal is actually a member of the board that

the appeal is going to be going through, I think there are a lot of concerns there.

Ms Murdock: I have a chart from the PLMAC, the management side, and there would be an ongoing committee relationship with the OWA, the OEA, the IDSP and the CEO. Then there would be WCAT, the health and safety agency, and the OWCI contact would be on that committee, but not reporting to the CEO.

Mr Mahoney: On the advisory committee? They tell me it's on the board.

Ms Murdock: I can always hand out a copy and you can make one and provide it to the members if you want.

The Chair: That's fine.

Mr Mahoney: I don't know if you want to review that particular committee. That may be the subject of another operation, but I think the relationship of those agencies to the WCB should be part of this report, at least to acknowledge it in the report and the amount of money it takes to run those agencies.

The Chair: That's up to you because you're part of the committee that's drafting the report. It's up to the committee what the report says. The committee actually isn't an agency, board or commission, so we couldn't review the committee that you're talking about.

Mr Mahoney: No.

Mr McLean: I wonder if we could have a copy of that report. It's the social development committee that did it. I would like our researcher to be able to have it and to perhaps bring one or two suggestions to us. I think it's important that it has been raised because it should be part of our overall report. I feel bad that we missed out on dealing with that in any depth at all.

Ms Murdock: Excuse me, Madam Chair, but when we were last sitting, when we had the members from the WCB here, these reports were mentioned because I specifically said, in very dulcet tones I might say, that this is the third committee that has reviewed the Workers' Compensation Board, and for the third time I have been substituted in on a committee that was dealing with WCB matters once again. So that report has been mentioned a number of times. It is not like it has suddenly arisen as a new item here.

The Chair: The report that is being referred to at this point, if I'm clear, is the report of the resources development committee—

Ms Murdock: The standing committee.

The Chair: —and every member does receive that report in their offices. I think if the committee would like to have copies of it, we can do that, or else you can review your own copies. What direction do you want?

Mr McLean: I suggest, if legislative research had a copy of it and gave us a couple of proposals, that would be enough for me and we would deal with our critic who deals with this.

The Chair: Any other questions? Thank you very much, Mr Yeager, for your presentation of the report.

Just before the committee adjourns, we will confirm that we are now going to have a subcommittee meeting.

The committee adjourned at 1200.

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 Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mahoney, Steven W. (Mississauga West/-Ouest L) for Mr Bradley
Murdock, Sharon (Sudbury ND) for Mr Malkowski

Clerk / Greffière: Mellor, Lynn

Staff / Personnel:

Pond, David, research officer, Legislative Research Service
Richmond, Jerry, research officer, Legislative Research Service
Yeager, Lewis, research officer, Legislative Research Service

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Official Report of Debates (Hansard)

Wednesday 6 April 1994

Journal des débats (Hansard)

Mercredi 6 avril 1994

Standing committee on government agencies

Report of subcommittee
Intended appointments

Comité permanent des organismes gouvernementaux

Rapport de sous-comité
Nominations prévues



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Wednesday 6 April 1994

Mercredi 6 avril 1994

The committee met at 1002 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Allen McLean): It's past 10 o'clock. We'll call the government agencies committee to order.

It's been brought to my attention that we should have the subcommittee report dealt with first, so we will proceed with that. Do we have a motion that the subcommittee report be accepted? Is anybody prepared to make that motion, that the subcommittee report be accepted?

Mr Rosario Marchese (Fort York): I move it, Mr Chair.

The Vice-Chair: All in favour? Opposed, if any? Carried.

INTENDED APPOINTMENTS

HENRY HYND

Review of intended appointment, selected by third party: Harry Hynd, intended appointee as member, Workplace Health and Safety Agency.

The Vice-Chair: This morning we are dealing with the recommendations. The first review is for Harry Hynd, intended appointee as a member of the Workplace Health and Safety Agency. Mr Hynd, I presume you're here.

Mr Henry Hynd: That's me.

The Vice-Chair: You have the opportunity to make an opening statement, or if you're ready to go to questions, we will proceed.

Mr Hynd: I don't have any opening statements to make. I'm here at the committee's pleasure.

The Vice-Chair: Mr Arnott, you have 10 minutes.

Mr Ted Arnott (Wellington): My name is Ted Arnott. I represent the county of Wellington in the Legislature and I sit with the Conservative caucus. Can you explain to the committee what your qualifications are for this position?

Mr Hynd: My qualifications are that I've been involved in the labour movement since 1958. I was an employee of Stelco. I've always been an activist in the union and one of my early activities in the early 1960s was to try and achieve workplace safety and health representatives for workers who would be representatives of the United Steelworkers of America and Local 1005. We tried, on a voluntary basis, to reach that and never achieved it till it was law.

I always had a keen interest in safety. Before immigrating to Canada, I worked in the Scottish coal mines, and I was a safety and health representative of the National Union of Mineworkers. My interest in safety and

health has never diminished, and the workers I'm privileged to represent today—I'm the director of District 6 of the United Steelworkers of America, which is really Ontario. We have some of the most dangerous industries in our jurisdiction and represent miners, steelworkers and basic steel production, people in secondary manufacturing, and have a wide range of membership in all industries, but especially in the most dangerous industries.

The industry I worked in, the steel industry, was one that made me aware that the union's focus always had to be on safety and that it wasn't enough to make decent wages and decent benefits if you didn't derive the benefit from them, if you died on the job or were maimed or injured and couldn't enjoy the fact that you could have a decent working life and retire with a decent pension. I always was aware of that and conscious of the good work that the union does around safety and health issues, so it was always a focus of mine.

Mr Arnott: You've been following the work of the agency to date, I'm sure, through the newspapers and through whatever contacts you may have.

Mr Hynd: Yes.

Mr Arnott: There are a lot of problems within the agency. My office has received a number of complaints from employers as to the manner in which the agency is conducting its affairs. It's the threatening tone of the letters that they're sending out to employers, and I understand that compared to the objectives of the agency in terms of actually training workers, the agency to date has been a failure compared to the objectives it set for itself in terms of the numbers of people it has actually trained. So there are some problems there. Do you have any suggestions as to what should be done with respect to solutions?

Mr Hynd: First of all, I wouldn't describe the agency as a failure. I see the agency quite frankly as something that the Liberal government saw would be an advantage to both industry and to working people, and that vehicle, while it's a difficult process, and it always is—bipartite isn't an easy process; it's a difficult process where compromise and bargaining have to take place between people with different viewpoints—I still think it's the best process there is to come to a consensus. At least my following of the agency has established clearly that the consensus that has been arrived at has been vitally important for working people in Ontario.

The certification training that's been agreed to by consensus by the employer group and the union group is a major step forward, in my view. I don't know anything

about those employers who might be receiving letters that they consider to be threatening. I don't know anything about that.

Mr Arnott: I wish I had one here to read to you, because they are threatening. But when I say it's a failure, I'm saying it's a failure because it has not met its objectives for actual training. The bottom line is that the agency is there, in my opinion, to train workers, to work towards safety training for workers, and it's not doing the numbers it set for itself in terms of its—

Mr Hynd: Well, I disagree with you on that as well. If you look at the facts about the percentage of workers who were trained prior to the agency coming into being, you'll find out that roughly 4% of employees were trained in any safety and health training, and quite frankly that 4% is generous when one really looks at the training that a lot of people received.

I think the agency has made, in my view, a massive leap forward to get certification training. It's true that even though the training was agreed to between the employer group and the union group at the agency, very few employers decided to leap on the opportunity to train and it then became necessary to try and move that along. I think the parties at the agency were able to do that and move the agenda along and it's now scheduled. I understand that not only is the training going ahead, but that those people, both management people and labour people who have participated in the training, have glowing comments about the training and the kind of training it is.

1010

Mr Arnott: Can you tell me how many workers have trained to date?

Mr Hynd: I understand that the numbers of people who have been trained are still low. We would like to see far more people being trained. However, considering the short period since the agreement was reached on moving that schedule up, I think it's moving ahead and that's certainly going to have some impact on industry and the frequency and severity of accidents. Unlike you, I'm quite encouraged, but like you, I would rather it had moved a lot faster.

Mr Arnott: Okay. As Tourism critic for our party, I was very supportive of a program that was paid for by employers through their workers' compensation premiums. I hope I have got the name correct: tourism and hospitality industry safety program. That program was set up to be an industry-specific training program for people in the tourism and hospitality industry and it worked very well. At the end of March this year, its funding was cancelled. There's another training program that existed for people who were employed in colleges and universities as well as in hospitals, and again a similar situation where they had industry-specific training for that sort of workplace and their funding was cut off.

Mr Hynd: Can you tell me how that training was agreed to? Was it agreed to between workers and management? Is that what you're suggesting, that they already had a program in effect that was agreed to?

Mr Arnott: Yes. I believe it was supported by pretty nearly everybody.

Mr Hynd: Supported by whom?

Mr Arnott: Everybody who was paying for it and everybody who was participating in it.

Mr Hynd: Everybody was paying for it?

Mr Arnott: Through their workers' compensation premiums.

Mr Hynd: Oh yes, I know that, but what I'm asking is, did workers have any input into the training? You're saying people were satisfied with that training. I'm not sure that's true. I know all kinds of training programs that go on. The 4% of people who were being trained were getting some kind of training. Whether it was satisfactory or not is up in the air. Nobody's really looked at that. I doubt that the training people were receiving was training that was satisfactory. I don't know where you get that information.

Mr Arnott: I've spoken to people in the tourism industry who are concerned about—

Mr Hynd: I have members who work in the tourist industry and I can tell you, in hotels there's virtually nothing happening in safety and health training, and that will happen now.

Mr Arnott: In what way was it unsatisfactory? The programs that existed and that trained, to my understanding, thousands of workers in the tourism and hospitality industry—in what way was it unsatisfactory?

Mr Hynd: You just tell me that it was satisfactory. I said I can tell you that my information from people who work in the industry was that there was virtually no safety and health training, no emphasis on safety and health in the industry, and that's going to change and there is going to be decent training and people are going to get trained properly. The frequency and severity of accidents will reduce as a result. I'm surprised that your information is that there's already good training out there in our industry.

Mr Arnott: We have a difference of opinion because we're hearing from different people, but you haven't told me in what way—except that there weren't enough workers being trained. Is that what the problem was? Specifically, how was the training program inadequate?

Mr Hynd: I'm telling you that the only information I have is from workers who are active in the hotel industry. They're active in the union. The hotel industry hasn't done a decent job on a voluntary basis of addressing the issues of safety and health for the workers. That's my information.

The Vice-Chair: Your time is up.

Ms Jenny Carter (Peterborough): Welcome to this board. I think you have touched on this already, but could you tell us whether you think the bipartite structure of the board is working well?

Mr Hynd: I believe it's working. I know there are lots of people who would like things to move ahead faster. At least they say they would like things to move ahead faster. But bipartism in the labour movement is the way that we achieve contracts with employers all the time, in my view, and not only mine. It's a system that's been tested and tried and certainly has flaws.

Vic Pathe, a civil servant who just recently retired, at a Sefton lecture just two weeks ago said in his view, and his experience has shown him, that the best way to resolve difficulties and differences and to achieve progress in industry is free collective bargaining. In many ways, the bipartite system that exists at the agency is an extension of that. I know that is difficult. It poses problems in working towards an agreement, but when an agreement is reached, it's an agreement that nobody should be able to complain about, although lots of people do. It's an agreement that's been achieved as a result of compromise, of discussion and understanding about issues.

While it's a difficult process and a lengthy process, it's a worthwhile process to go through. I think we get a lot more buy-in as a result of that. If it was just dictated by somebody, I don't think we'd be nearly as successful in the long term, and my view isn't a short-term view for safety and health; my view is a long-term view where we have to work towards the eradication of the myriad of deaths that occur annually in industry, the serious injuries: 360,000 injuries were reported to the compensation board. That's reported; a lot more happened that didn't get reported.

We represent workers at Elliot Lake in the mines and in Inco in Sudbury and we have developed with both these areas, Rio Algom, Denison Mines and Inco, a process where workers would become highly trained and have a positive impact on safety and health issues. That took us a long time to achieve at the bargaining table, but we now have a consensus by those employers in the union that works and has reduced the frequency and severity of accidents. We consider that a very positive thing. So we're prepared to go through the agony of having to negotiate with employer groups to achieve success, because I think that's important.

Ms Carter: I think "consensus" is the important word there. I understand that the agency has only had to have a vote about once, because it is being successful in coming to agreements through consensus, and I agree with you that's a much firmer basis on which to go on.

I understand that there's been some talk about mergers of delivery agencies of health and safety. Do you know anything about that?

Mr Hynd: I know that's one of the goals of the agency and one of the goals that the parties of the agency have been given to try to achieve. I can tell you one I am familiar with. Essentially, through the Mines Accident Prevention Association of Ontario, which is the mining organization which has merged with the forestry and paper and pulp industry, the merger of these three groups, in my view, the evidence will show that we've put these groups together and that will be more cost-effective and they will deliver better training and effective training. They've moved into combined headquarters in North Bay. Everybody I talk to in the MAPAO is very satisfied with what's happening there. So I see that again as something that will certainly help our members greatly.

Prior to the coming together of this, MAPAO was an employers' organization which had one or two union representatives on the board, in my view totally unsatis-

factory, and we fought for years with the companies that we deal with in mining and for MAPAO as an organization to have a bipartite board, which now has one. I believe it's working and I think the proof will be in the pudding. I think over time we're going to see real improvement in safety and health in the mining industry, and that's going to be a big benefit to workers I represent.

1020

Mr Marchese: My sense too is that this bipartite structure is an important one. I get the feeling that in the initial stages both union groups and management groups would have a problem working with each other. So the difficulties that are evidenced there could be a reflection of that kind of structure that has been put together and the difficulty in dealing with it.

Part of the research here says, "It was evident that many employers were failing to sign up their employees for the core certification program." In the future it might work where people are not necessarily fighting each other. How do you see your role in getting the employers to understand that this is a very useful thing not just for workers but for them as well?

Mr Hynd: As an example, when Inco discovered that their worker safety and health representatives had a positive impact on reducing the accident frequency and severity in the workplace, they then saw that as a reduction in their accidents and payments through compensation. Inco put a half-page ad in most of the northern papers commending the union for pushing them into this. I think that will happen with frequency as employers discover the benefits of good safety and health training, well-trained people in the workforce, a workforce that is aware of the problems of safety and health in that workplace. They will see tremendous benefits in that.

I think those employers that are reluctant and fighting this will get on board, because it will become evident even to those that don't believe workers need safety and health training. There are people who don't believe that workers need safety and health training: spokespersons from the small business community, Judith Andrew. She insulted the intelligence of workers, said we're like bumps on a log. I think that when employers become aware of the benefits for them as an employer they will get on board and will accept the agenda that quite frankly will be evident for people. It won't be difficult for them to understand.

Mr Marchese: It's quite logical to me, when you look at the facts, that employers would come on board, because they would recognize that in the end this is good for them. However, it seems to me that there is a different kind of resistance, it could be an initial resistance, and it might take longer than one would assume, but hopefully they will recover from that.

I have another question. I think we spend \$50 million or \$60 million for the agency. It comes through the Workers' Compensation Board. I'm not sure whether it's a fair question to you, but is this a sufficient amount of money that comes from the WCB for this agency to do its work, is it inadequate, are there other things you would suggest or are we on the right track?

Mr Hynd: I am not fully qualified to answer the question, but I'm going to take a stab at it. Regarding the money the agency will receive, I believe it will be discovered that, given the money the government was already spending on a variety of different organizations whose function was to try and deliver safety and health programs in the workplace, there are tremendous savings by the work of the agency. Whether or not the money that's currently allocated will be sufficient, I don't know. But I know this: It will require a lot less money than is currently being spent.

As an example, with the agency I talked about that has been formed in North Bay with the pulp and paper industry, forestry and mining, there's already a dramatic savings that's evident there. So I think the work of the agency will be admired by all if it gets an opportunity to function.

Mr Marchese: Thank you, Mr Hynd. Good luck.

Mr Alvin Curling (Scarborough North): Mr Hynd, I appreciate your appearing before us so it gives me the opportunity of asking you a couple of questions. I share some of the concerns that Mr Arnott has expressed to you with the bipartite agency that was set up by the Liberal government, which I too feel has failed and has not been effective. I may discuss one or two areas which I think contributed to the failure. As a matter of fact, as you know, it was set up for equal representation for both labour and management and the concept that labour and management could work and cooperate and develop health and safety programs for the workplace. Some factors have contributed to this kind of failure.

Would you agree with me that some of the factors that contributed to that was the fact that the vice-chair Paul Forder who, as I said, actually, coupled with a kind of weakness of the management vice-chair Bob McMurdo—

Mr Hynd: I missed what you said just prior to that.

Mr Curling: I said some of the failure—

Mr Hynd: I heard about Paul Forder. You mentioned something about—

Mr Curling: I said it's a style really of the vice-chair Paul Forder. Is that how you pronounce his name properly?

Interjection: That's right.

Mr Curling: Plus vice-chair McMurdo. They say management was so displeased with the performance that a lot of confrontation and arguments happened that really broke down some of the smooth running of the agency. Is that so?

Mr Hynd: I can tell you that in my view one of the biggest difficulties at the agency is really with the management representatives in that they don't receive from management any real support. They go there essentially as individuals.

If you look at the trouble there has been at the agency, if you really analyse it as being with the management group, they've been dissatisfied with management when it has made decisions. I don't think you'll ever be able to satisfy everyone.

My view is that the decisions that have been made at

the agency, the consensus that has been arrived at, has broad support in the management community, but some people in the management community, like Judith Andrew, criticize the hell out of people, and people say, "Why are we serving on this board to take all this criticism?" That's been one of the difficulties.

With respect to the makeup of the board and the vice-chairs, while the vice-chairs are there and provide information to both sides, it's the management group and the labour group that make decisions, so the vice-chairs don't have the ability to drive an agenda. The group that is representing management and the group that represents labour, those are the groups that decide on what they'll find consensus around. I don't know where you get the problem with the vice-chairs.

I haven't been on the agency. I sat as an observer at the last meeting, and while I've seen the difficulty that consensus brings, it reminded me of being in collective bargaining. Consensus was arrived at and we met all day and we finished at a quarter after 6 at night and found consensus. I think that's great.

There are very few times I've entered collective bargaining and begun in the morning and finished at night with a deal, so I think the agency's working far better than people give it credit for.

Mr Curling: You're saying it's lack of cooperation by management then.

Mr Hynd: No. I didn't say lack of cooperation. What I'm trying to point out is that I think the management team, whoever they are, will have difficulty because they don't represent the industry. They don't go there with a lot of power. They go there essentially as individuals who are prepared to work and try and arrive at decisions that will help drive a safety and health agenda. When they do and have some people dissatisfied, they receive a lot of criticism from a minority, and they wonder why they're spending their life taking criticism, but in the labour movement, we don't have a problem with it. We deal with that all the time. We know we can never satisfy all of our members, all of the employers, all of the politicians, all of the public. We try and do the best job we can and satisfy the majority of people we represent.

We come to the table with a much greater level of support, of comfort. I know it's much more difficult for the management people as individuals on that agency than it is for labour representatives. I wasn't being critical of the people who sit on the agency. What I was saying is their role is much more difficult because they don't have a structure that gives them support.

1030

Mr Curling: This new amalgamation that is happening—as a matter of fact has happened, I gather, by March 31, which has passed. It is now law. It is now the policy. Do you see that this new amalgamation, coming into that, will be an easy thing to do? There seem to be quite a few disagreements with the other groups who were into this long ago and felt that they were being shut out and not given a fair opportunity to share some of the policy directions or to be recognized for their contribution to advance health and safety.

Mr Hynd: I can only say to you that voluntary compliance was the name of the game right until the agency was thought about by the Liberal Party and voluntary compliance never brought decent safety and health training in the province of Ontario.

Those groups that complain will complain because they see their group being amalgamated and losing their individuality. Maybe some people lose power on that. But they're going to learn as a result of amalgamation, and about the kind of training that's going to be delivered, that they're a much more effective group in their amalgamation.

Sure, there'll be resistance to that, sure, there'll be some unhappiness with that, but I'm not concerned about the groups; I'm concerned about the delivery of safety and health training to workers. I know there's no way that workers will receive less training. They'll receive much more, much better and much more effective training. The agencies created as a result of combinations will be much more effective organizations. While there'll be some personal discomfort, there'll be a lot of workers who are saved and their families will feel that much better.

Mr Curling: Could you give me a comfort zone in this respect? I get from you that you feel that workers—I agree they should be protected in the sense of health and safety in the workplace, but give me a comfort zone to say that the employers themselves can share in this. I hear you saying things like, "They will learn later on," and I gather that you're saying, "We will tell them how." I heard my colleagues over there say, "Consensus is the thing. Once we agree, we should move ahead." Well, I'm not so sure about that anyhow. The social contract has taught us that regardless of collective bargaining, it can be changed by government anyhow. Give me a comfort zone about working together.

One of the other factors is that you said people who have lost out in this amalgamation, it's just because they have a self-interest. You didn't use those words, but I think they came forward with another plan to say: "Here are some of us. Of course we agree that if we cut it down and make it more efficient—it needs some efficiency there, some cost saving." But I gather too when they put their proposal forward, they said: "No way. You have till March 31 to comply, to agree, but if that's not the case, you just have to adhere to what we say." Give me a comfort to say that they're working together.

Mr Hynd: Okay, I can give you a level of comfort. Let me tell you that I know there was a great deal of consultation between the three agencies that you're making reference to and the workers' safety and health agency. I know there was a great deal of consultation between these agencies and the management team that represents companies on the agency. I know that, a massive amount of consultation.

The agency, both management and labour, have agreed. Management haven't agreed because they don't want to listen to the agencies that you're referring to, they have listened to them, but they know that to deliver effective training for workers, this is the way to go. That's why they've agreed to it. That's why consensus was arrived at.

The people who cry about consensus being arrived at don't want the agency bipartite system to work.

The Chair (Mrs Margaret Marland): Thank you. You're through your time. I'm sorry, Mr Curling.

I'd like to thank you very much for your appearance before the committee this morning, Mr Hynd.

Mr Hynd: Thank you very much.

FREDA FYLES

Review of intended appointment, selected by official opposition party: Freda Fyles, intended appointee as full-time member and vice-chair, Social Assistance Review Board.

The Chair: I'd like to welcome our next intended appointment, Ms Freda Fyles. Ms Fyles is the intended appointee as full-time member and vice-chair of the Social Assistance Review Board. Welcome, Ms Fyles. This was a selection by the official opposition. Do you want us to start with the government?

Mr Curling: Go ahead.

The Chair: We started with the PCs first this morning so it doesn't matter.

Mr Curling: It doesn't matter to me.

The Chair: Do you wish to start?

Ms Carter: You go ahead.

The Chair: Okay. Did you wish to make any brief opening comments? We'll wait till the door is closed. It's hard to hear in this room; maybe we could close the door. I know this room is warm this morning but it is difficult to hear. Do you wish to make a brief opening statement or comments to the committee? If not, we'll just start the rotation with questions.

Ms Freda Fyles: I am quite prepared just to answer questions, Madam Chair.

The Chair: That's great. Thank you. Mr Curling.

Mr Curling: Welcome to the committee, Ms Fyles. I'm sure you're coming into an organization or an agency that is quite active because of, if you want to call it the recession, the economic downturn of our province. Many people are coming forward for welfare and other social assistance. Also, I think all three parties are looking at whether we should look at a reform of how we do things in how we give social assistance to people. Do you agree with some of the reforms that are coming out? Do you think the system needs reform?

Ms Fyles: I am certainly not prepared to discuss policy, Mr Curling, because that is not an area in which I am experienced. I only know what I read in the papers and what I hear. I think there is very little doubt that the governments, both federal and provincial, are intending to reform. I have read Time for Action and it proposes major changes in the delivery of social assistance. I would assume that the government in its wisdom has based that on its experiences, including those from the Social Assistance Review Board. I don't think I could go any further than that.

Mr Curling: So you're saying you have no comments right now about any social reform to the system. But would you say that the system needs to be reformed?

Ms Fyles: I am told that is so by people who have studied this. SARC and the advisory group that prepared Time for Action have gone into this matter in great detail, with a lot of advice from experienced people, and I am persuaded they know what they're talking about.

Mr Curling: Your employer, the government of today, has stated that. At one stage they think there is no great abuse to the welfare system, but on the other hand they said: "We will get some welfare police officers to look at this system and investigate these social abuses." So you're going to walk into an agency—there will be reform and you'll have to be acting upon some of those reforms. I know we have limited time and my colleague here wants to ask some questions. I don't want to get on with it too much, so I'll ask her to proceed.

1040

The Chair: Mrs O'Neill, eight minutes.

Mrs Yvonne O'Neill (Ottawa-Rideau): I'm sorry to be late, but I had another breakfast meeting that went on a little longer.

Ms Fyles, I see that in your background you have done some work with conflict resolution. Do you see some role for that in SARB, and if so, what?

Ms Fyles: I think conflict resolution, or alternative dispute resolution, which I think it is now called, has a place in most administrative tribunals. I know that it is increasingly being used, for instance, at the Ontario Municipal Board. Whether it is appropriate in the social assistance field, I am not prepared to say. I don't think I am sufficiently familiar with the proceedings to be able to say that. However, I think ADR is a very good alternative resolution of many problems.

Mrs O'Neill: Okay. I have examined this social assistance review annual report quite closely, and I have quite a bit of difficulty with this report. I don't know whether you've examined it.

Ms Fyles: Yes, I have.

Mrs O'Neill: My difficulty with it is that there is no place in the report for recommendations, yet there are several places where this appeal mechanism seems to stagnate or seems to develop clusters of subjects which are appealed. I wonder if you'd like to comment on a role you could see in looking at that situation.

Ms Fyles: Perhaps I am not clearly understanding your question. If you're talking about whether the board can influence the number of appeals that it receives or the type of appeals—

Mrs O'Neill: No, that's not the question. The question is that there are clusters of subject areas, or clusters of subjects under appeal, yet the board which hears these appeals offers no recommendations regarding that situation. I'm wondering what your comments are on that.

Ms Fyles: I would suggest that the decisions of the board, which are of course available to this committee and to the Legislature and to the public in general, probably are the basis upon which policy changes would be considered by the minister. I would say that the board's role is to interpret the legislation and employ it and the regulations in line with precedents that have been established and within the jurisdiction that it is allowed.

Anything that affects policy would be included in those decisions and would be apparent to the minister.

Mrs O'Neill: Okay. Have you travelled in the province?

Ms Fyles: Yes, I am certainly aware of just about all except the extreme north.

Mrs O'Neill: All of your experience seems to be in Metro Toronto. Could you say a little bit about how you hope to deal with that?

Ms Fyles: The lack of experience outside of the province?

Mrs O'Neill: Outside of Toronto.

Ms Fyles: Outside of the city. I think the problems that are faced in appeals to the board are endemic. They are in large measure due to unemployment, and I believe that is pretty generally experienced across the province. I'm not too sure that the city of Toronto or the Metropolitan area, although it has the largest number obviously, has any particular issues that are not found in the rest of the province. In any case, I believe that I am able to be impartial in these hearings in regarding the special circumstances that may or may not apply in rural areas or anywhere else in the province.

Mrs O'Neill: I certainly have had some different experience as far as things that are not the same outside of Toronto, even in this last year.

I'd like to ask you one more question because your curriculum vitae seems to have—you even use the word "advocate" yourself, that you have been an advocate. Because the role that you're seeking is definitely not that of an advocate, how do you propose to change roles?

Ms Fyles: My role as an advocate was as a lawyer in some circumstances but more recently as social housing coordinator for the city of Toronto. This involved promoting and advocating social housing within the city limits. This was an advocacy role because there was a great deal of opposition from neighbourhoods and from some members of council and other interests. Because it was a new program, it was a new position, it required advocacy.

I do not have any problem, though, in dropping that role. I realize that as a member of the Social Assistance Review Board, I would have to be impartial. I would be helping to determine appeals on an objective basis and I am able to do that, I believe.

Mr Curling: You'll be dealing with cases that are either the breakdown of the first part of the system or some reassessment has to be done when it comes to you for review. Members in my community or constituency have come to me very often with this complaint, not so much with the problems of the social review board, but the fact is that on the first contact or the continuous contact on that level, workers are not being as cooperative and not even answering phones and what have you.

Is there anything you see that you could be doing to sort of eliminate that kind of situation coming to you? Because if there is a good understanding of the system on the first level, the fact is, you don't have to do half of those reviews that come there. I'm sure many of the cases that would come before you would be cases where you'd

say, "I don't know how they could not resolve it in the past." Do you see yourself playing any role in that respect?

Ms Fyles: No, Mr Curling, I wouldn't presume to tell the Community and Social Services department how it should operate. It is not, as I see it, the role of SARB to do that.

Mr Curling: May I make a quick suggestion? I think at the time you can make some suggestions because the fact is, when it's coming there and you see evidence of how it could be dealt with better, that it could save the social review—or make a recommendation to the chair how we can improve that system, because the breakdown is—do you have a problem with my speaking?

Mr George Mammoliti (Yorkview): No, I just—

The Chair: You're out of time, but—

Mr Mammoliti: I just realized that you're out of time. I'm trying you help you out.

Mr Curling: You're chairing the meeting now, eh?

Mr Mammoliti: I'm just trying to help you out.

The Chair: Did you wish to respond to Mr Curling's question?

Ms Fyles: Yes. I feel there are people whose job it is to look into that question specifically and I think they're better qualified, and in fact it is not our role to do that, if I were to become a member of the board.

Mr Allan K. McLean (Simcoe East): I'm wondering how familiar you are with the workload of the board. Are you familiar with—

Ms Fyles: Yes, I have read the annual report.

Mr McLean: Do you have a fairly good knowledge of the board's operation?

Ms Fyles: Yes, I believe so.

Mr McLean: Have you determined what your role will be as a board member?

Ms Fyles: I think all board members do essentially the same, of course. They interpret the legislation and its regulations and, to the extent that it is permitted by the regulations, they use their discretion in determining whether this appeal should or should not be agreed to.

Mr McLean: A lot of the people who have been in the existing system—it's complex, it's highly bureaucratic, many applicants for welfare found it confusing and frustrating. Would you term that as being a fact? Do you believe it to be true that clients, when they go for the review, find it frustrating and complex?

Ms Fyles: I only know what I have read, Mr McLean, and I assume that people are saying that because they believe it to be so.

Mr McLean: July 8, 1993, Tony Silipo, the Minister of Community and Social Services, unveiled an ambitious program of reforming welfare. It was called Turning Point. Were you familiar with any report that was made to deal with that very issue?

Ms Fyles: In July 1993?

Mr McLean: Yes.

Ms Fyles: I have a very general knowledge of what was proposed at that time. It was income support pro-

grams, I think, and a child support program. But I understand that is no longer part of the program.

Mr McLean: At that time, he argued that the province's traditional social assistance programs no longer worked satisfactorily and he indicated historically welfare programs were introduced as an income program of last resort for those in dire economic need, to provide only temporary emergency assistance. Now the case has become a major program, regulated by hundreds of thousands of Ontarians.

1050

I was at a meeting last night. The meeting I was at was a question and answer. I had some fruit growers who were at that meeting indicating that they cannot get help. With the large unemployment we have in this province, the large amount of people we have on social assistance, he advertised and nobody would apply for his job in market gardening. I find that hard to believe when we have the amount of people we have on assistance.

How do you think we could change the system so individuals would work, perhaps top up or something? There's got to be some way and I'm curious if you have any knowledge of how you would anticipate—I know it's not your job; you're to review applicants who don't fit. But I'm wondering if you could have some comments with regard to how we could change that system.

Ms Fyles: I really can't comment on that, Mr McLean. I can only assume that they are genuine in their complaint, but the details of it would obviously have to be known, and I have no personal knowledge.

Mr McLean: The other area that concerns me is with regard to the 500,000 children we have on the income program. There's been some recommendations made that the cheques would be sent monthly to all low-income families in Ontario, and the size of the cheque would determine the income of a family. Do you see that role from the ministry and that program as being effective? It's one of the three programs the minister was looking at as an alternative. Would you see that as effective?

Ms Fyles: I understood that was in the July 1993 report and that concept has been abandoned, if not permanently certainly temporarily, and for financial reasons. However, like most of us who are mothers and grandmothers, and grandfathers, I have concerns about the enormous number of children who are on the social assistance rolls. They are the largest single group.

Mr McLean: Two other areas of concern: One is the sponsors under the federal immigration law, which has swamped the Social Assistance Review Board with appeals. Apparently the number of appeals increased by close to 50% last year with those. How would you suggest the board go about trying to change that or the ministry maybe try to change that? As the ministry says, it's only getting 28 cents from the fed government now for dollars. It's a real burden on the province of Ontario. Do you see any way that could be changed?

Ms Fyles: Again, it's not the sort of thing that I would be getting into. I would assume that federal-provincial discussions would be the way to deal with that, if in fact it can be dealt with.

Mr McLean: About 1991 or 1992, there were about 13,000 students on assistance. Today there are over 30,000. As a review officer, do you see that as a major part of your job? We had some instances brought to the Legislature the other day about family members paying their parents rent and living in their same apartment in their residence. That's going to be a major concern, because it's going to get to be a larger and larger problem. How do you see us putting the brakes on something like that?

Ms Fyles: As far as the operations of SARB are concerned, in the situation of interim assistance, of course it's just financial need that is looked at administratively. But if this is an appeal that comes to the board, then many considerations come into it under the act and its regulations. One of those is of course financial need, providing the necessities of life, and also the question of whether, by staying in the home, there is danger or a very inappropriate living environment for a young person.

I think these are the considerations the board is concerned with. Is this a situation where it is better that a young person be out of the home for one of many reasons? I think those are spelled out in the decisions and generally are spelled out in the act and its regulations.

Mr McLean: Those are going to be pretty hard decisions to make, because you'll have the family members saying, "We don't want them here any more," yet they have not been abused or affected and they should really be still living at home. But you have both the student and the parents saying: "We just can't communicate any longer. We're going on our own." Who's going to determine the fact of whether they should be on their own or whether they still should be paid through the family?

Ms Fyles: I think it is the board's role to make that determination and I would suggest that family breakdown is one of the reasons that young people have been awarded assistance. I would assume that in these cases the board's position has been that this family environment is so detrimental to young persons as to affect their lives in a way which cannot be contemplated. So I would say that is the board's role.

Mr McLean: What would you think would be the cause of the increase in student welfare from 13,000 to 30,000 in three years?

Ms Fyles: I'm afraid I can't answer that, Mr McLean. I have no way of knowing.

Mr McLean: Will that be an area that you'll be directing a great deal of attention to? I mean, 30,000 people is a lot of students who are living off—the taxpayers are paying the shot here and it's going to be hard to determine when you get these appeals.

I know in my community they're appealing all the time what our social assistance field workers are doing. It's frustrating for our field workers. I've never seen a group of people so frustrated as I have now. It's difficult. They can't make a visit to every place that they want to.

When that stopped happening, it exploded the amount of people who were receiving assistance. There are more and more appeals all the time. I see we've hired two or

three, but do you think this will be a full-time job?

Ms Fyles: Oh yes, certainly. As far as the appeals in various categories are concerned, of course the board has no control over the appeals that come to it and so there is no way, especially as an arm's-length agency, that it can do anything to control the kinds of appeals that come to it. People are entitled to appeal.

Mr McLean: To cover the whole province of Ontario, do you think the 270 new people who are being hired to investigate all welfare is enough?

Ms Fyles: The question of fraud in the system has been estimated by a person who is probably well qualified to know, that is, Don Richmond, the Metropolitan Toronto commissioner of social services, and he says 1% to 3%, which to me means that 97% to 99% of recipients are honest. I do not regard this as a startling or even extraordinary degree of fraud. But it is also true that 1% represents \$60 million, and obviously the province and all of us have to be concerned when those sorts of sums of money are involved.

Mr McLean: What we're looking at then is, perhaps these new people are going to cost more than what we're going to save.

Ms Fyles: That remains to be seen. I don't know what the new people will cost, but the potential is for \$180 million a year, if it were 3%.

Mr McLean: And do you think it is?

Ms Fyles: No, I don't have any view on it because I have no way of knowing. I only know, like you, what I read.

The Chair: Thank you, Mr McLean. That was right on, within three seconds. Now we have Mr Marchese and Ms Carter.

Mr Marchese: Ms Fyles, welcome. I want to say that your experience in alternative dispute resolution, or dispute mechanisms, I think will be useful for a number of reasons. One, in a board of this size, where I think there are 33 members—

Ms Fyles: Twenty-five.

Mr Marchese: Twenty-five—you will always have conflict there, and I suspect that kind of expertise will be very useful in mediating problems even among yourselves. But also in decision-making that kind of knowledge will be helpful, at least in making you more efficient in your ability to make decisions and therefore give faster decisions on issues as opposed to slower. So I think that's useful experience.

I wanted to pick up on what Mr McLean said and make it a statement, because I don't want to frustrate you with policy questions that you obviously cannot answer, nor might you want to answer them. It is not your job to make policy, obviously, but rather to implement the policies as set by the government.

1100

The question that had been raised about the decision by the provincial government last summer to terminate social assistance for landed immigrants: That was simply something the minister had talked about and as a result we got a big blip on the appeals, but I think that has

quickly disappeared ever since the modifications have been made to it.

But it alerts the public to the problem we have, that we are getting from the federal government only 28% of the support we used to get under the Canada assistance plan. We used to get 50% in 1990; in 1991, we were getting 42%; in 1992, 32%; 28% in 1993, and it's diminishing. The problem is that we're having an increase in social assistance recipients and the federal government is diminishing its support.

When the minister talks about dealing with the particular issue of terminating social assistance for landed immigrants, he's saying to the federal government: "You have a big responsibility here. Given that you're not giving us the dollars and we are having a higher number of people wanting it or needing it, we're putting out more money than you're giving us, and it is your responsibility to be providing for this." That's part of the history and part of the statement I wanted to make in relation to this question.

But the questions that obviously affect you are the following: The average length of time from the hearing of a case to the mailing of the decision was 73 days, though in March 1993 the average was 47 days, they say. In your opinion, is that too short, too long a time? What would you do about all that?

Ms Fyles: I think it's an amazing improvement, and I would assume this is probably as good as it gets, given the current load the board is facing.

Mr Marchese: The board is empowered to decide whether a hearing panel should be composed of one, two or three members. The annual report says it is the policy to use three-member panels for only the more complex or novel cases. Is it your view—and I'm not sure whether your experience leads you to understand this well enough—that we're deploying people correctly or adequately in our ability to deal with individual cases?

Ms Fyles: I believe the institution of a training program for board members and a continuing process of education means that sitting individually is much more likely to be appropriate now than it was in the past when there were no such training programs. Speaking as an outsider with no personal knowledge, I would assume that this is a good way to proceed, to preserve the three-member boards for serious issues and allow two- and one-member boards in other situations. This has been very effective in dealing with backlog and making the board much more efficient, as it is today.

Mr Marchese: And you see yourself dealing with this, obviously, and also getting a sense of what "serious" means in terms of what cases lend themselves to a two- or three-board panel. Do you have a sense of that?

Ms Fyles: As a lawyer, perhaps I do have the advantage of understanding what is important, what is crucial and what may become a big issue, yes. I don't think lawyers are particularly well-endowed with that, but perhaps we have a slight advantage.

Mr Marchese: It says in our research paper, "With the consent of the parties, the board may hold a paper hearing involving written submissions or conference

calls." Do you see that as an efficient or effective way to deal with an issue, where you might require people to actually be there in front of you, where you can face them, where you can get a different feel of the person or the particular problem? Do you think this is a useful way to go? Does it present problems you might want to look at?

Ms Fyles: No, I don't think it presents a problem. First of all, it's done with the consent of the person applying or appealing. There are many cases which can be dealt with in this summary fashion, I believe. If the board has found it to be efficient and there has been no problem with the appellants, I think it is perfectly reasonable to proceed this way.

Ms Carter: I understand that there is a policy of having service on this board of only two terms, of three years each, and that despite a few recent exceptions, that policy is to be maintained because of the public perception that board members might get desensitized over time. Do you agree that it is a wise policy to have a limitation of two terms?

Ms Fyles: I am not extremely knowledgeable on the subject of the board's reasons for this, but I certainly think a turnover is desirable. The six-year term of two three-year terms sounds to me quite reasonable. There may be exceptional circumstances where one would like to have a person take a third three-year term, but generally speaking, I have no problem with that.

Ms Carter: This is something that has already been touched on to some degree, but people keep telling us that there is abuse of the social assistance system. The government has recently announced that there will be a stepped-up effort to eliminate abuse. Do you think this will affect the operation of the board in any way?

Ms Fyles: I would certainly expect there to be a great increase in appeals.

Ms Carter: Right. But it won't affect the way in which the board itself comes to decisions.

Ms Fyles: Oh, no. I think the board operates in the same consistent manner, according to the act and its regulations.

Ms Carter: There has been particular concern about interim assistance to young people, 16- and 17-year-olds. On what would you base a judgement whether to give assistance to such a young person who was appealing to the board?

Ms Fyles: The question of interim assistance is dealt with administratively. It's not dealt with by the board members directly; it's dealt with before the appeal, as I'm sure you know. The sole criterion, I understand, is financial need, so that is made purely on that basis. I have noticed in the most recent annual report of the board that only 37% of applicants for interim assistance are granted that assistance.

Ms Carter: So you feel that those who do appeal have been pretty well looked at already.

Ms Fyles: The actual appeal process is quite separate, of course. It is a whole-board process, so it goes into matters other than the financial necessity, the financial needs. It goes into all these other related considerations,

such as family breakdown, mental/physical/sexual abuse, but that is of course a full-board appeal process.

The Chair: There's one minute left for the government members. No questions? All right.

Thank you very much, and we appreciate your appearance before the committee, Ms Fyles.

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ADRIENNE MARIE KENNEDY

Review of intended appointment, selected by third party: Adrienne Marie Kennedy, intended appointee as member, Muskoka District Housing Authority.

The Chair: The next intended appointment is Ms Adrienne Marie Kennedy. Welcome to the committee this morning. This is a selection by the third party, so Mr McLean, would you like to start?

Mr McLean: Welcome to the committee this morning. I see by your résumé that you've been involved in the Planning Together process, and you've attended the OHC Windsor conference. In what capacity did you attend that?

Ms Adrienne Kennedy: I attended that in just a tenant capacity to gain a perception of maybe the existing problems in the Muskoka District Housing Authority, or problems that don't exist, just to have a comparison.

Mr McLean: What's your occupation?

Ms Kennedy: I am a domestic engineer.

Mr McLean: Where is your employment?

Ms Kennedy: In my home.

Mr McLean: How many complexes does the housing authority in Muskoka have?

Ms Kennedy: It has 222 units.

Mr McLean: Are you familiar with the employees?

Ms Kennedy: Yes, I am.

Mr McLean: Are there certain units that have security tenants? That's interesting to me.

Ms Kennedy: There certainly are in the seniors' building. I'm in the family units myself, and we don't actually have a security tenant. Each tenant has a responsibility to look out for their neighbour and to also phone the housing authority. We have an open communication there as well.

Mr McLean: Are they on the payroll or are they volunteer?

Ms Kennedy: Oh, no. It's a job that every tenant feels they should do.

Mr McLean: The employees, though, will certainly be paid, I'm sure. There will be a manager?

Ms Kennedy: Yes, there is, of our local housing authority, a manager and two assistants.

Mr McLean: I see you have a waiting list of about 200.

Ms Kennedy: Yes, we do.

Mr McLean: Does the manager sit on that committee when you're dealing with priorities for people?

Ms Kennedy: Are you talking about the Planning Together committee?

Mr McLean: I'm talking about people who apply for

the housing. I'm sure they apply to the board.

Ms Kennedy: I'm here today to discuss the Planning Together committee. I don't yet know a lot of the processes that go on at the board.

Mr McLean: I thought you were being appointed to the Muskoka District Housing Authority, and you say you're here to discuss the planning committee.

Ms Kennedy: Yes, I am, sir. I am here to apply for membership to the board. I feel my tenant perception would be a valuable tool to the board. I feel it is through my knowledge of the Planning Together process and the committee, that experience, that warrants my membership to the board.

Mr McLean: So you will be dealing with people who have applied to be residents of the housing authority, of the board.

Ms Kennedy: I believe so, and any major decisions concerning the local housing authority, certainly.

Mr McLean: You must be familiar with the operation of the housing authority.

Ms Kennedy: Oh, yes.

Mr McLean: What do you think will be the main issue you would like to deal with?

Ms Kennedy: Self-confidence in tenants, to make them much more confident in their own ideas and opinions, most definitely. That will give them the confidence and self-esteem to make other very important decisions in their lives in other areas as well, be it to further their education, which I am in the process of doing, be it work-related decisions; to give them a broader perception.

Mr McLean: I had a lady in to see me in my office not long ago who was on family benefits. She's trying to upgrade herself. She wants to work. She says, "I have no problem with people who are on assistance, but I have a problem with the people who are on assistance who are not trying to get off it." I think that would probably be the feeling of most people in those—

Ms Kennedy: Most definitely. My heart goes out to them in a certain respect, the fact that they don't feel they have the confidence to move forward. That's definitely something they need to work on.

Mr McLean: Great. I wish you well.

Ms Kennedy: Thank you.

Mr Mammoliti: Welcome, Ms Kennedy. I thought I'd start by saying that I commend you for doing this, coming forward and wanting to sit on such a committee. I wish more tenants like yourself would come out and take the leadership role you've chosen to take. I know, from looking at some of the information in front of me, that you have learned quite a bit over the last few years.

Ms Kennedy: Most definitely.

Mr Mammoliti: You may want to share some of that learning experience with us in terms of what you think you can bring to the board.

Ms Kennedy: There are a lot of issues regarding safety and security, and physical issues regarding tenants, how they feel about where they live, but the most

important issue to me is a tenant's self-esteem. Once we can open those lines of communication—and the Planning Together committee is a very powerful tool to do that. We are at the beginning of sending out our first newsletter, and we're hoping that will begin to initiate a communication between the tenants and the local housing authority. Once the tenants feel confident in communicating their ideas, hopefully they'll get a more positive aspect and outlook about where they live.

Mr Mammoliti: How come you believe in this? Why do you believe in the tenant concept? What experiences have you had otherwise?

Ms Kennedy: I am a tenant of public housing.

Mr Mammoliti: Give me some of the other experiences you may have had before this Planning Together type of approach took place.

Ms Kennedy: It's very interesting. Before I went to the Windsor conference, in the area I lived, it wasn't that I didn't want to be more a part of my housing community; I just didn't know how to do it. There's always been an open communication between the tenants and the housing authority, as of course it is on a much smaller scale than, say, the Toronto area. I think the Planning Together process takes it one step further. Not only can a tenant communicate their ideas regarding day-to-day problems, but it gives them a broader perception in life and in the community as a whole. They are a very real part of that community, and they should be able to have the chance.

Mr Mammoliti: There's been some criticism in terms of the amount of money the government spends on public housing and whether it's worth the money we spend, the bang for the buck, so to speak. Do you believe, if all this unfolds the way you would like to see it unfold, that you may be able to make a difference in terms of how the units are run and the expenditure?

Ms Kennedy: By working with our housing authority?

Mr Mammoliti: By working with the board, yes.

Ms Kennedy: Absolutely. I am a firm believer that some tenants, being a tenant of public housing, are very good at turning one dollar into two. They have the smarts in that area as well, and there is potential there to make a difference, most definitely.

Ms Margaret H. Harrington (Niagara Falls): Was it a difficult journey down here this morning in the snow?

Ms Kennedy: Yes, it was.

Ms Harrington: Well, thank you for coming.

I was at that conference in Windsor too, because I was with the Ministry of Housing at that time. I brought with me a couple of women from Niagara Falls who were involved as tenants with the Planning Together committee. I wondered if you might know them: June Barnes and Julia Friesen.

Ms Kennedy: No, I'm sorry, I don't.

Ms Harrington: I want to tell you that it's going to be a difficult role, but please persist. It's very important that you fully participate.

Ms Kennedy: I believe that too.

Ms Harrington: Great. The Planning Together process that's been going on for two and a half years almost has certainly been breaking new ground, trying to open up doors and take away barriers, get people involved, but it's been difficult. How would you suggest it be done differently?

Ms Kennedy: To further get tenants to participate?

Ms Harrington: Yes. Have you seen problems with it or have you suggestions for the Planning Together process?

Ms Kennedy: Actually, I haven't seen any problems with it. Anything that will give tenants the opportunity to voice their concerns and their ideas is a wonderful thing, and all we can do is keep trying. It is a slow process, but tenants have to keep hearing that there is somebody out there who is indeed listening to their ideas. Once they feel that people truly are listening, they will start to come forward.

Ms Harrington: You said "that people are listening." You did get the sense that people were listening?

Ms Kennedy: Yes.

Ms Harrington: Was it the board that was listening, the local housing?

Ms Kennedy: After the amalgamation did not happen between our local housing authority and North Bay, it made the tenants feel that the petition they signed—they had an opinion, that they would rather their housing authority base office stay in our community for easier accessibility. Once we found out that the amalgamation did not happen, it made the tenants feel, "Yes, there is somebody out there who is listening to us." I think that was a very positive step.

Ms Harrington: We first came out with the work book which had the five different areas of suggestions, one of them being security, discrimination, those types of issues. Did you feel that was helpful, the work book?

Ms Kennedy: Most definitely. Those are of course concerns for every tenant. They're not as serious for us in Muskoka as they would be in a larger area. Our prime concern right now is how tenants feel about themselves. Most definitely that is our prime concern.

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Ms Harrington: What is your objective? What would you like to see happen at the board level? You were just saying your goal is to have more choices for tenants in their lives, more self-esteem.

Ms Kennedy: My basic desire is to have more tenants feel they can come forward and communicate their ideas in most of the decision-making efforts that take place regarding their own housing community.

Ms Harrington: Would this entail any changes at the board level?

Ms Kennedy: No.

Mr Robert Frankford (Scarborough East): Could you give us some indication of how much demand you see for housing in your area?

Ms Kennedy: There's definitely a great need for it, obviously, with 222 units and 200 people on the waiting list. We're a smaller area, but yes, there is definitely a

demand for more public housing.

Mr Frankford: So you know people who are interested.

Ms Kennedy: Yes, I do.

Mr Mammoliti: That sparked another question. In view of what Dr Frankford just asked, do you believe that if government were to build new housing, it should be reflective of what you've been used to, or do you think we should build with the cooperative type of approach?

Ms Kennedy: I certainly don't think we're quite prepared for the cooperative type of approach. We are travelling down a wonderful road right now, but it's a very slow process. I think we need to get the tenants communicating far more, having a lot more confidence in their own decision-making efforts, before we really go the full extent.

The Chair: Thank you for appearing before—

Mr Curling: Give me a chance.

The Chair: Oops, I'm sorry. That's right.

Mr Curling: I want the opportunity to thank Ms Kennedy for coming forward to serve on this board.

Let me follow up on Mr Mammoliti's question. Maybe I should say first, to put it in perspective, that the government is the second-largest landlord in North America. They're large and they're one of the worst landlords in North America, regardless of what they want to say. If you look at how some of the buildings are maintained, if you look at how it is done, people have quite a few complaints about that landlord, the government.

Building more homes or building more apartments or complexes that are very expensive—it's even more expensive than when the private sector builds it. There are vacancies within Muskoka now, but the talk is that it's not affordable. Considering that there is rent control in place, do you feel that those who need accommodation would be able to access it if they were given a rent supplement to go out and look for the kind of accommodation they need?

Ms Kennedy: I don't feel I'm knowledgeable enough to answer that question. My knowledge is completely and totally with public housing, because that is where I'm a tenant.

Mr Curling: But while you are focused on public housing, I am focused on accommodation. You said 200-odd people are waiting to get in. They are not concerned where they get into; they want a place. They don't want to wait for the government to start building public housing before they can get in. There is much cheaper access, in a sense, of giving me the supplement so I can access affordable housing somewhere else.

Ms Kennedy: That's where I also feel that tenants' confidence in themselves is a very important aspect too, because once tenants have that confidence in themselves, they can do anything they choose to do. They can get a higher-paying job, they can pick and choose the home they would like to move to. You would definitely see far more movement in the waiting list in that area as well.

Mr Curling: Do you feel that people living in these homes are in transit on the way to other accommodation,

or do you see it as somewhere they could make a permanent home?

Ms Kennedy: Well, I look at my unit as my home. It's not just some place we go every day; it's our home. I also feel that if it was not for public housing, I would not have been able to take the time to sit back, to learn how to be the parent I want to be, and not only that, but be the kind of role model I know my children deserve. I had the time to sit back and really take a good look at the educational system. I know I want to further my education, and I realized that by being so concerned about my children's education. If it wasn't for public housing, I wouldn't have been able to come to this point in my life right now. I know that.

Mr Curling: It's wonderful, and I think it's compulsory that we must have some access to affordable housing. Having done that—and you're so confident, and I want to commend you for coming before some rather intimidating people here. Now that you have reached this, do you see that housing should be able to afford you to do this and that you now move out, or do you see that public housing should be a permanent place for people to reside?

Ms Kennedy: If that's what they feel they need. All tenants will come to the point where their confidence level is raised, and yes, they will probably move on. That is a slow process. It's not a matter of a tenant moving in there and living there for two or three years and moving out and everything is okay. It's a slow process. They have to change their whole way of thinking. It takes quite a while.

Mr Curling: Let me give you a revolutionary thought, and I'm sure you have it in mind too. If the government was offering those units for sale and you got an opportunity to buy those units, would you buy one?

Ms Kennedy: If I was working at a good job and I could afford those units, yes, I probably would. I would like to own my own home, like I'm sure anybody else in Ontario would.

Mr Curling: If someone is living there for five or 10 years and, because they consider this their home, if the government said, "All those who are living there for 10 years or more, we will give you the opportunity to buy these units at a market rent or just below market rent because you're there," would that be a good process for government to move towards?

Ms Kennedy: I don't really think I know enough about it. Anything like that would be a wonderful opportunity for a tenant, like it would be for anyone else. It would depend on whether the tenant could afford it and whether they were prepared to take on the responsibility.

Mr Curling: You've been living in these units for some time—

Mr Frankford: That's what Margaret Thatcher did.

Mr Curling: Hers was all botched up anyhow.

Ms Carter: She botched it up.

The Chair: Excuse me. We don't have interjections.

Mr Curling: Let me retrieve my thought. Would you say the landlord you have is a good landlord?

Ms Kennedy: Most definitely. The housing authority office in Bracebridge is an excellent one.

Mr Curling: Do they keep the place very good? Is it maintained properly?

Ms Kennedy: Yes, wonderfully well.

Mr Curling: Do they have the tenants participating effectively?

Ms Kennedy: Most definitely. The tenants are really beginning to take pride in where they live, to look at those units like they're not just units but their homes.

Mrs O'Neill: Ms Kennedy, you keep talking about a sense of self-worth. I don't really think it's only public housing occupants who have that problem in 1994.

Ms Kennedy: Of course not. We're lucky, though; we do have the avenue because of public housing.

Mrs O'Neill: That seems to be one of your goals, and I certainly think it should be a goal of anybody who's accepting a leadership position. Could you tell us some of the things that you have either done in the last year or would do in your role of housing authority member to increase that sense of self-worth of the people who would, really, become dependent on you?

Ms Kennedy: Most definitely. I do believe that we need to promote ourselves to the community as a whole to show them that our worries and our concerns are the same as theirs, be it that we want our children to be safe when they're playing out in the community; that we would like to see the crime level as low as everyone else would. We could do that through Block Parents, through Neighbourhood Watch, through PC COPS, which is a computerized telephone service, as well. I think that's a very positive step towards doing that, and that'll be included in the Planning Together committee's tenant handbook, as well as creating that line of communication which we're hoping that our first newsletter will initiate.

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The Chair: Any more questions?

Mr Curling: Yes. Again, you're educating the everyday tenants themselves about what happens day to day. In your area, who are the people who need accommodation mostly there? Is it families or single people who need accommodation?

Ms Kennedy: I come from the family units. I'm a tenant in the family units, sir, so where I live, we're all family units.

Mr Curling: Is there demand on family units more?

Ms Kennedy: Pardon me? Could you repeat that, please?

Mr Curling: I know, the acoustics here are very bad. Is there a demand for family units more so than single units in Muskoka?

Ms Kennedy: I really don't know the answer to that.

Mr Curling: The reason I ask is because I think Mr Mammoliti asked about co-operative housing and I think you agree—you said no. But I think you do agree. Dare I say that? I think, actually, the co-operative homes themselves have been in co-ops with organizations coming together with government to build the kind of non-profit housing instead of building all those little

high-rises and government owning it all out. But for non-profit groups, building non-profit housing, do you believe that's a good way for the government to go?

Ms Kennedy: Eventually, yes, most definitely, sir, absolutely. But as I said before, it's a slow process; most definitely. It's not something that should happen overnight; most definitely.

Mr Curling: So you think that non-profit groups in the area are not supportive to tenants as much?

Ms Kennedy: Absolutely not, but I think the tenants need to be the ones to begin communicating their ideas, to find that confidence in themselves to move forward as well.

Mr Mammoliti: It's going to take a while for the tenants to be educated that way.

Ms Kennedy: Most definitely, yes.

Mr Curling: Thank you for coming and I wish you well. I see some of the things you are doing here. I think it's really down in the grass roots where you can identify with some of the issues.

Ms Kennedy: Thank you.

The Chair: Thank you, Ms Kennedy, for appearing before the committee this morning.

JOHN BUTCHER

Review of intended appointment, selected by government party: John Butcher, intended appointee as member, Council of the College of Medical Laboratory Technologists of Ontario.

The Chair: I'd like to invite our next intended appointment, Mr John Butcher. Good morning, Mr Butcher. This appointment is as a member of the Council of the College of Medical Laboratory Technologists of Ontario. This was a selection by the government members. Dr Frankford, would you like to start?

Mr Frankford: Good morning. I realize this is a new college, so I guess you haven't had any direct contact with it as yet. You're a lay appointee, but presumably you've had some chance to look at the legislation and perhaps also to discuss the particular characteristics of laboratory technologists.

Mr John Butcher: Yes, just a bit though. I'm very, very new to the area.

Mr Frankford: Do you have any thoughts about the needs of laboratory technologists as a distinct profession?

Mr Butcher: I'll tackle it, I guess, from the perspective of what appear to be some of the needs of professions. I worked for a number of years for the Canada Council of Professional Engineers, which is the national association of all of the provincial licensing bodies. If I understand the situation with medical laboratory technologists, and I put it in that context, I guess what it seems that people need is some sense of the standards of the profession, the sense of ensuring that the public health and safety is protected through the standards and the competencies, that kind of thing, within the mandate of what I understand to be the college's life.

That seems to be where our concentration is, around protecting public health and safety, around ensuring the standards for entry and the maintenance of registration,

any other needs that technologists have. I understand there are other organizations that also work with them to help satisfy those other needs.

Mr Frankford: I'm a member of another profession myself. I think one of the characteristics of laboratory technologists is that essentially they're all employees, which does not apply to all professions, many of which are much more self-employed. I've heard the question raised about a double jeopardy, that there is a responsibility to the employer, the possibility of being disciplined by the employer, and then the fact that there's a college as well. Do you have any thoughts on that?

Mr Butcher: I don't know the culture of medical laboratory technologists very well, obviously, but I do know the culture of engineering. The vast majority of professional engineers are employed in organizations. How they handle that double jeopardy is, within the tensions of day-do-day life and the decisions we make, very much their first priority is to uphold the standards of their profession. When those conflict with pressures from their employer, they clearly have a choice to make. But as a member of the engineering profession, and if the culture of the medical laboratory technologist profession is the same, their first responsibility would be to uphold the standards of the profession which has given them a protected title and all of the privileges that go with that. Engineering, facing the same situation as you describe, handles it that way.

Mr Frankford: So you would see that the professional standard in many ways becomes the predominant one.

Mr Butcher: Yes.

Mr Frankford: Presumably, this would give more clout to the technologists themselves to say, "This is what I want to do or what I can do in my professional role," which perhaps can override what their employer might be demanding of them.

Mr Butcher: Once again, sir, in the engineering field, if I can lay that template over here, part of the cost of the privilege of being a self-regulating profession is exactly what you describe. The priorities are the standards of the profession. Once again, as I said, I don't know the culture of the medical laboratory technologist profession, but my experience with another profession is that there's no ambiguity about that and that's part of the responsibility that comes with being a member of a self-regulating profession.

Mr Gary Malkowski (York East): Mr Butcher, once you are appointed, what would be your priority in your role as an appointment to this agency and this commission? What kinds of things are you looking for?

Mr Butcher: If I understand the role of the public members properly, our role is to make sure that the legislation, the standards of the profession and the concerns for public health and safety that are hooked on to those are upheld. That's our primary priority.

Mr Malkowski: Do you have any particular area of interest that you would pursue as a member of the council?

Mr Butcher: No. At this time I don't have a particu-

lar area other than being a responsible and contributing member of the council of the college.

Ms Carter: I'd like to welcome you particularly as an alumnus of Trent, since I'm the member for Peterborough and I've had strong connections with Trent. It's always nice to see Trent people appearing in the big wide world, which they frequently do.

Obviously, you have a special role as a non-professional member of this council. Part of that may be, as you've just suggested, upholding the public interest where there might be a more narrow professional interest that some of the other members might want to uphold. What have you in your background that makes you a good candidate to fill that kind of responsibility?

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Mr Butcher: Again, when I was anticipating a question like that, I was thinking back, and one I've referred to with Dr Frankford's question, around just experience in watching a self-regulating profession operate; in that case, engineering.

I guess the other three things I would bring are, one, a lot of experience both as a member of and a consultant to groups, organizations or committees which are tackling similar questions in similar environments.

The second thing is, it's always, depending on your view of the previous night's hockey game—I spent many years as a hockey referee and referee-in-chief and chairing discipline committees when players attempted to dislodge parts of other players' anatomies with their sticks and that kind of thing, so working in that environment of high emotion and potential conflict.

I guess the third thing is just, both through inclination and training, the ability to do a reasonable job at sorting through complex issues and pulling out what appear to be the cores of those issues and then addressing them rather than being distracted by all the noise around a lot of issues that people come and feel strongly about. I guess those would be the three things.

Ms Carter: There is a tendency for what you might call lay members of such bodies to be co-opted, and I think you might need quite a lot of strength and experience to adhere to your role as what you might call a public watchdog.

Mr Butcher: I always recommend hockey refereeing as good occupational training for any kind of situation like that.

The second thing, though, that as a public member we need to be conscious of is that sharing a perspective with someone else does not mean you've been co-opted by that other person. It may mean that, all things considered, you share that perspective. What I wouldn't want to see and what I do not expect would occur is that public members are somehow assessed by their contrariness to whatever anyone else within the profession is talking about. That seems to be an equally unproductive course to take. As public members, part of our responsibility is to sort through that noise, to keep in mind the mandate and the responsibility of the council and to then help to push decisions that we feel are most consistent with those two things. Who we happen to be in agreement with at

any one time is less relevant than how we came to the decision or the perspective that we've come to.

Mr Curling: Thank you for coming before us, Mr Butcher. I'm trying to understand, as I read over and over again the work and the mandate of the council, the College of Medical Laboratory Technologists. Maybe you could help me. I know you've explained a couple of things here, how you perceive it to be and understand it to be in adhering to carrying out the regulations and policies of the government or whatever came down through their policy.

Would you in any way, or this council in any way, assist in academic curriculum for the technologists when they're going through making recommendations to universities or our colleges that are graduating technologists? Would that be part of the role too, to make any kind of a recommendation to them?

Mr Butcher: Right now, I wouldn't want to anticipate what the college will do or what the council of the college will recommend. But if part of the mandate of the college is not only to ensure that the people entering the profession meet certain standards and qualifications but also that over time there's some assurance to the public that they've maintained those, then the question of how to ensure that technologists maintain the standards they had when they entered the profession, and to the extent that this often rolls into questions of curriculum that educational institutions have to grapple with themselves, I see a relationship there. I wouldn't want to anticipate too tightly exactly how that will play out.

Mr Curling: I understand that. So you don't approve technologists. This thing will come through the normal process of being one who is a graduate technologist. This council itself doesn't put the stamp of approval that says, "You are now a technologist," but more or less you maintain the discipline of what a technologist would be. But you would not say—you know, like doctors and lawyers, they go through all this internship kind of thing, and then they say, "Now you shall be." The council doesn't play any role of approval when one becomes a technologist then.

Mr Butcher: Well, if I understand correctly, the college has the responsibility to determine which people who claim to be medical laboratory technologists have access to the protected title that comes with the legislation. So while the college would not say that you or I are technologists, the college's mandate is to say that you or I, or both of us, are medical laboratory technologists in the sense of the protected title, which brings with it certain expectations about our competence and the standards of our education and that kind of thing. So the college certainly, if I understand correctly, decides who gets to wear the protected title.

Mr Curling: Yes. I know sometimes it is difficult to determine how one becomes a technologist or a professional, and I would like to identify in some committee, in some council, who can assist. The reason I say that—and let me maybe explain myself better—I know access to professions is sometimes impaired by some systemic discrimination. Women have a difficult time getting into some of the professions and some other minorities also

have a difficult time getting into the professions.

I just wondered if this council in any way would have played a role—maybe I'll not ask you to answer the question. The thought comes in my mind that some inference or some observation could be also placed on who gets in, who maintains and who must come out—

Mr Butcher: I see.

Mr Curling: —if they're not adhering to or adopting the kind of discipline that is laid down. Do you see a council like that playing that kind of role—I don't want to call it control—but assisting in people accessing those professions?

Mr Butcher: My understanding of one of the strengths of all of the self-regulating professions from a public perspective is that they're standards-based and they're not based on some willy-nilly assessment of you or me as individuals. Those standards are clear and they're published and anyone who wishes to enter into a self-regulating profession as a practitioner has to meet those standards.

Now, I've flagged that I have experience in the engineering world and so it would be naïve in the extreme to say that, just because the standards for entry to engineering are explicit and public, women don't have a terrible time accessing that system because of the culture of engineering schools and a whole bunch of other things.

I don't have a clear sense of where the college, as a college, given its mandate of primarily public protection, would intervene to address the kind of systemic concerns that you're talking about. I wouldn't say the college has no role; I'm not in a position today to share what that role would be.

Mr Curling: Yes, I am sensitive to the fact that you are aware of these kind of systemic barriers that do exist in the access to the profession itself. One little quibble question itself, meaning that midwives—do you think the name should be changed?

Mr Butcher: To what?

Mr Curling: This is what I—

Mr Butcher: Frankly, that's a question I've never thought of before. No, I don't have any sense of whether "midwives" is a good title for that profession or not.

Mr Curling: I know that they will be coming under your council too as a matter of how they behave and what have you. I have a difficulty seeing a man going around being a midwife. So I'm just wondering that.

I don't have any other questions. Thank you for coming forward.

1150

Mr McLean: Welcome, Mr Butcher. I just have a couple of questions that concern me. Medical laboratory technologists in Ontario: They're now licensed?

Mr Butcher: If I understand, they're now a self-regulating profession under the terms of the various acts that have been passed.

Mr McLean: My understanding now is that there are some hospitals that have clinics whereby they would take blood and have it sent away to be tested. I had the

experience some time ago when I went to the MDS lab to have some tests done that the tests ended up in three different locations. Part of it was done in Orillia, part of it was done in Barrie and the rest of it was done in Toronto. Are you aware of those types of things going on within the industry?

Mr Butcher: No, I'm not. I don't have a lot of experience as a consumer of the professional services that medical laboratory technologists provide, except with the usual blood tests and that kind of thing.

One of the things that will always be important for a college like this one or any of the other ones to do is, as they used to say in the planning trade, to stick to the knitting. To the extent that there are organizational issues within the health care system that are not issues around the professional competence of technologists, then what the college will probably have is a difficult time fitting those kinds of questions into its priorities for action.

So the kind of scenario you describe, to the extent that it reflected inadequate qualifications, that would be one issue. To the extent that it reflected organizational decisions or other things, that would be another issue, and my bias would be not to tie them together.

Mr McLean: I was kind of curious, because I took the opportunity to write to OHIP, which individuals can do, to find out the costs that have been charged against your number. It ended up about \$127 for those three different tests. To me, it seemed like it should have been done in one place. Each hospital maybe should have had a lab where they could do all these tests, but that's not the case, apparently. So these laboratories that are set up are doing spot ones, and then we go on and do others at a great cost to our health care system.

Mr Butcher: Yes. As an observation, I understand the experience that you had. One of the understandings as well that all the self-regulating professions have is the capacity to make clear and to allow more access to interdisciplinary work within a profession. To the extent, once again, that the situation you were in reflected difficulties in getting one person the qualifications to do all of the things that you mentioned, that would be a different question than just questions around the organization of delivery.

Mr McLean: The ministry has launched a laboratory services review to scrutinize government spending on laboratory services. Apparently the report is done, and nobody has seen it yet. I would hope that you would take the opportunity to review that, and perhaps there are some points in there where you may be able to scrutinize the cost to the government of how that's taken place.

I wish you well. Thank you.

Mr Butcher: Thank you very much.

SUBCOMMITTEE REPORT

The Chair: We have two final items to deal with this morning. The first thing I want to do is go back to the subcommittee report that was moved at the beginning of the meeting, because one of the appointees, it has been brought to our attention, Susan Copeland, who was selected by the official opposition, her appointment is as a full-time person to the Workers' Compensation Appeals

Tribunal. The Premier's secretariat has brought to our attention that Ms Copeland did appear before this committee a year ago when she was appointed as a part-time appointee to that same tribunal, so I think Mr Curling is willing to move a motion to make a change.

Mr Curling: May I move the motion that Susan Copeland be replaced by Sister Richard, who is coming before us from the Collingwood and Area Housing Authority. She'd be nominated as a member and chair.

The Chair: I think, first of all, we need a motion to reconsider the subcommittee report that we approved this morning, and if there is unanimous consent to reconsider the report we've already approved—is there unanimous consent? There is. So now we'll deal with the motion to replace Ms Copeland with—

Mr Curling: —with Sister Richard.

The Chair: —Sister Gisele Richard—

Mr Curling: The Collingwood and Area Housing Authority.

The Chair: —who is actually on the list that we will be reviewing today for selections.

All in favour of that motion? That motion is carried.

Now we would like a motion for this morning's four appointees, either collectively or individually.

Mr Marchese: I move concurrence in all of the names.

The Chair: All right. Mr Marchese has moved the appointment of Mr Henry (Harry) Hynd as a member of the Workplace Health and Safety Agency; Ms Freda Fyles as a full-time member and vice-chair of the Social Assistance Review Board; Ms Adrienne Marie Kennedy as a member of the Muskoka District Housing Authority; and Mr John Butcher as a member of the Council of the College of Medical Laboratory Technologists of Ontario. All in favour of that motion? Opposed, if any?

Mr Curling and Mr McLean, you haven't indicated in either of those votes. Are you in favour of that motion?

Mr Curling: Collectively, I can't vote on all of those. I'm not in favour of two of them.

The Chair: All right. You have to vote if you're staying at the table. If you're not going to vote, you have to withdraw from the table.

Mr Mammoliti: I would like to know who he's opposed to. Who are you opposed to?

Mr Curling: You're doing it collectively—

Mr Mammoliti: I want to know.

The Chair: That motion is carried. Mr Curling, you can't leave because we need you for the subcommittee meeting. I realize that you both withdrew from the table for the purposes of the vote. That motion is carried.

If someone would like to move adjournment of the meeting—

Mr Marchese: I move adjournment.

The Chair: —the subcommittee members to remain. Thank you for your attendance today. That motion is carried.

The committee adjourned at 1159.

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- *Mammoliti, George (Yorkview ND)
 - Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
 - Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Arnott, Ted (Wellington PC) for Mrs Witmer
Marchese, Rosario (Fort York ND) for Mr Waters
O'Neill, Yvonne (Ottawa-Rideau L) for Mr Bradley

Clerk pro tem / Greffière par intérim: Bryce, Donna

Staff / Personnel: Yeager, Lewis, research officer, Legislative Research Service



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of Debates
(Hansard)**

Wednesday 13 April 1994

**Journal
des débats
(Hansard)**

Mercredi 13 avril 1994

**Standing committee on
government agencies**

Subcommittee report

Draft reports

**Comité permanent des
organismes gouvernementaux**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Wednesday 13 April 1994

Mercredi 13 avril 1994

The committee met at 1003 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Allan K. McLean): I call the standing committee on government agencies to order. The first item of business on the agenda is the report of the subcommittee meeting held on Wednesday, April 6. If that report is satisfactory, a motion to adopt would be appropriate.

Mr Daniel Waters (Muskoka-Georgian Bay): So moved.

The Vice-Chair: Any discussion on the report? If not, all those in favour? The subcommittee report is carried.

DRAFT REPORTS

ONTARIO FOOD TERMINAL BOARD

The Vice-Chair: The next item of business is to review the draft report of the Ontario Food Terminal Board. Our researcher, Jerry, has a few comments he'd like to make.

Mr Jerry Richmond: Thank you, Mr Chairman, just a few housekeeping matters. I distributed a press clipping on the truckers' strike in the States. I spoke the other day to Mr Carsley, the general manager of the food terminal. You see there on the second column, the third paragraph, there's mention of the food terminal. Mr Carsley confirmed that the Teamsters truckers' strike in the US is not having an impact upon produce shipments by truck into the food terminal. He indicated to me that most of those long-distance truckers who come up from the States are non-unionized, independent operators, so to date the strike has had no effect. I just thought I'd bring that to your attention.

A few other matters in the body of the report. In looking at it, I came across a few housekeeping changes, so I'll very briefly bring those to your attention. What I'm looking for at the end, I guess, is concurrence on the committee's part that when I revise the report I would incorporate these housekeeping changes plus any other changes the committee agrees to today.

On page 1 of the report, the main body of the report—*Interjection.*

The Vice-Chair: It is the food terminal report. What date is on that? Some of the members are not informed.

Mr Richmond: There's a covering memo dated March 22, 1994, addressed to Mrs Marland from me. The title is Draft Report on the Ontario Food Terminal.

The Vice-Chair: Has everybody found that?

Mr Richmond: That's the covering memo, then there's the report itself. Page 1 of the main report has

"Introduction" at the top. Everyone's with me? There are some things I wanted to bring to your attention.

On page 1, the second paragraph, the last sentence will be expanded to reflect this committee's deliberations on March 30, 1994, and the deliberations of today, something to the effect of "On March 30, 1994, the draft report was presented to the committee," and then there'll be a following sentence making reference to today's discussions. If we finish the report today, that will be it. If there are additional days, I will make reference to those.

Ms Sharon Murdock (Sudbury): We've got to finish today.

Mr Richmond: Okay. That's one thing.

On page 22 now, at the top of the page, there's a draft recommendation relating to the food terminal's conservation and waste reduction efforts. In looking at that, I feel it would be better for the wording to be changed, and I'll just suggest the wording. What I've done in the wording change allows the recommendation to stand on its own. It essentially says the same thing. The wording will be along the following lines, "The efforts of the food terminal board to date, to practice waste reduction, reuse, recycling and conservation are to be commended and the committee encourages..." and then the recommendation will remain the same. It's just a wording change.

The other change is on page 23, draft recommendation 12. As we discussed earlier, and the clerk has received confirmation, the Ministry of Agriculture and Food has recently been renamed Agriculture, Food and Rural Affairs. The reference in that recommendation, if it should remain, will be to the ministry of Agriculture, Food and Rural Affairs, just to reflect its current name.

That it's it in terms of housekeeping changes. I just wanted to bring those to your attention.

The Vice-Chair: Do the government members have any changes that they foresee should be done in the report?

Mr Waters: There's something I wanted to pursue a bit more, because we had a fair amount of discussion last week about it. I can't remember who was sitting in on the other side—Mr Mahoney, I believe—and he brought up the topic, and I can't remember what page offhand—

The Vice-Chair: Page 10, I think.

Mr Waters: It was about the C unit, as I believe it's called, at the food terminal. It was decided that they wouldn't go ahead with it, and there was some discussion about the return of money that was put down by, in this case, I think a Mr Vetere. We just got these answers, and

I was wondering if we could take a moment to read them over so we could indeed have a bit of understanding. I believe it is an important issue.

1010

When I read the letter, by the way, from Agriculture and Food, I get the feeling that it was indeed this gentleman's lawyer who contacted the food terminal and said he no longer wished to proceed, as it states in paragraph 2. The feeling I received from discussions with the food terminal, and it says in the report, was that the food terminal had decided to no longer proceed. In there lies a problem. We have to determine who didn't want to proceed here. If indeed it was the food terminal, maybe it does owe this gentleman his money. If it was he who decided he didn't want to proceed, he knew up front that if he backed out he'd lose his money. I was wondering whether anyone had any answers to that.

The Vice-Chair: Do you want to recess for five minutes to caucus it or talk about it?

Mr Waters: I'm looking at the researcher. Maybe he has some answers for us that would help us make our decision on this. I don't know whether we really need to caucus or whether, as a committee, we have to come up with a decision.

The Vice-Chair: When the original draft agreement was signed, they were proceeding with the other C units, and it was later scaled down to five units. From information I have, the food terminal recorded a loss trying to accommodate proceeding with the C units. I presume the agreement made with the new tenants and the food terminal—does anybody have a copy of that? That agreement is what would dictate whether they would be allowed to get any money back or not.

Mr Waters: If I might, Mr Chair, I think the key thing—as I read the letter from Ag and Food, it implies that indeed the proposed tenant decided he no longer wished to proceed with his commitment to lease the new wholesale unit, but when I read the report, it says it was cancelled by the board.

The Vice-Chair: After they got that letter, perhaps.

Mr Waters: I think that's what we have to know. If the board made the decision and as a result of that decision the letter came from the lawyer, the board should have some responsibility. But if the letter came from the lawyer in advance and initiated the decision not to go ahead with unit C, then I think this gentleman is out of luck.

The Vice-Chair: There's nobody here who is going to be able to answer those questions. I think it's going to have to come from either the legal people of the food terminal or the legal people from the ministry to give us a definition. We can't solve it.

Mr Robert Frankford (Scarborough East): To elaborate on that, it seems to me that this is exactly what is under litigation right now. Who are we to give an opinion which is clearly being reviewed by a court?

The Vice-Chair: Yes. We're not going to be able to resolve that, and there's nobody here who's going to be able to give us that opinion.

Are there any other sections of the report that some-

body has a concern about? If there aren't, once we get this clarified we will be able to approve the report, but we can't do that until we get this clarified.

Mr Paul Klopp (Huron): What are we trying to clarify? The question Dan brought up was an interesting question, but quite clearly, in the minister's letter dated April 11, 1994, the solicitors of both the tenderer and the board will continue to discuss this and make a decision. That's the clarification, and as far as I'm concerned it's clarified. It's in the hands of litigation. Leave it at that.

The Vice-Chair: Fine. If that's satisfactory with the government, that's fine with me. Are there any comments from the opposition?

Mr John C. Cleary (Cornwall): No, I just think it should be cleared up there at some time shortly before the final comes in. I can see what the members are talking about.

The Vice-Chair: So we can accept this report subject to the clarification or accept it as it is. What do you want to do? It's up to the committee.

Mr Richmond: The discussion in the report of the return or non-return of the deposits for the construction of the C units is covered beginning on the bottom of page 8 and moving into the top of page 9. If appropriate, I'll just read those sentences. If you wish, you can relate that to the correspondence we've received from Mr Carsley at the food terminal and the response of the minister, then the committee can make a final determination whether this wording is appropriate.

The sense that I got generally, though, from the committee is that you appear to be regarding—this matter of the return of the moneys is still subject to legal action; therefore, the sense I got is that there's this sub judice rule. I'm not a lawyer but I've heard that one before and I can certainly consult with our lawyers in legislative research. Let me just read you those sentences, then maybe we can make a decision as to whether you feel that description is still appropriate.

Let me just read into the record the whole paragraph, if I may, at the bottom of page 8, just to put it into context:

"In 1988 the OFT board, in response to recommendations by the government agencies committee (1988 report) embarked upon a project to build 10 new 'C' produce warehouse units," and these were to have been located at the south end of the food terminal property, "which would be leased to tenants without the perpetuity clause. This building, which would also have included second-storey office space and additional truck loading docks, was planned to be built along the southern limits of the terminal property." As an aside, the food terminal did incur costs. They employed engineers and architects to actually design these structures. So they did incur, my recollection is, several hundred thousand dollars in consultants' costs in doing up the designs for these buildings. "This project was later scaled down to five units."

Now here's the key part, these next couple of sentences: "In 1990 because of a change in economic and financial conditions three prospective tenants who had

signed agreements to lease in this new facility indicated that they were no longer interested. The 'C unit' project was therefore cancelled by the board and has not been reactivated. The OFT retained the deposits made in the case of these cancellations. The expenditures associated with this aborted project resulted in the OFT recording a loss in 1990-91."

The Vice-Chair: Thank you. I think that clarifies it. I think what we need is a motion to adopt the report.

Mr Waters: I have one more question.

The Vice-Chair: Mr Waters and then Ms Carter.

Ms Jenny Carter (Peterborough): What troubled me was whether they'd undertaken the expansion at the request of those people in the first place. Whose idea was it to have the expansion?

The Vice-Chair: The food terminal wanted to expand and there were requests for people who were looking for units. When they got all these requests they thought, "Okay, we'll proceed and expand," and several of them, I guess, put money down to be part of it. They're the ones, when the economical times turned around, that withdrew their support.

Mr Waters: Page 14, item 5: I think we would have a problem with this, because if indeed we open up the act, which it would require in order to have only Ontario at the farmers' market, whether we like it or not we would probably seek the wrath of the interprovincial trade barriers and those negotiations we could affect as well as NAFTA and the free trade agreement.

Everyone knows that I'm not a great lover of NAFTA or free trade, but the reality of it all is that, if indeed we change the rules by opening that act and saying, "Only Ontario-grown produce," I think we might be seeking the wrath and indeed it could end up on the international trade discussions. Do we want to do this?

Ms Carter: But we're not talking about legislation here, are we?

Mr Waters: In order to have Ontario-grown only at the terminal in the farmers' market, you have to change the act.

Ms Carter: Are you sure?

Mr Waters: That's what I was informed by the Ministry of Ag when I asked.

Mr Alvin Curling (Scarborough North): The Minister of Agriculture told you that?

Mr Waters: The staff did. In order to do what recommendation 5 says.

Mr Curling: I thought that was discussed, and they said it had no impact on it. We went through that in detail. Raising the NAFTA stuff again, with all respect, is irrelevant. That was discussed at length, and they said it had no impact on it. The minister's staff was here.

The Vice-Chair: Any other clarification?

Ms Carter: I think we should stick with this policy until something happens that would appear to be obstructing it, in which case we'll meet it when it happens.

The Vice-Chair: That's right.

Mr Waters: Other than that?

The Vice-Chair: Fine. Really this is just a recommendation to the ministry, and the ministry will still do what it thinks is right. All it is is recommendations.

Mr Waters: You know it and I know it, eh, Al?

The Vice-Chair: Do we have a motion to adopt the report? Any discussion? If not, all in favour? Opposed? Carried.

The next report is the Workers' Compensation Board.

Interjections.

The Vice-Chair: That motion was to adopt the report as it was, and that motion was carried.

Mr Waters: Yes, it was.

Ms Carter: What about the change of wording that was recommended? Have we adopted that?

The Vice-Chair: We adopted this report.

Mr Waters: We've adopted the report as presented.

The Vice-Chair: The researcher indicates to me that some concerns were brought up, but we have had a vote. The draft report, as in here, has been presented.

Mr Waters: Maybe I should clarify because we did probably procedurally do it wrong. The researcher had some recommendations—

The Vice-Chair: We can't open it now.

Mr Waters: The researcher had some recommendations that we should've dealt with.

Mr Ted Arnott (Wellington): I'm quite pleased, actually, with the report as far as it goes. We're talking about the workers' compensation report?

The Vice-Chair: No. We're talking about the food terminal.

Mr Arnott: I'm sorry.

Mr Waters: I understand why the researcher is looking quizzically at us because he had recommended in one place that we adopt the new name of Ag, Food and Rural Affairs.

The Vice-Chair: That's right. There are some others on that.

Mr Chris Stockwell (Etobicoke West): Do we have to reopen this now?

The Vice-Chair: No, we don't have to.

Mr Stockwell: Then what are we talking about?

The Vice-Chair: The researcher indicated to me there are some concerns that he had with the report. However, the committee has adopted it as it is, and that should be the end of it.

Lynn is out making copies of the WCB report that our researcher has. We can either proceed with the Human Rights Commission or wait for that.

Mr Waters: Is it going to be a lengthy period of time or five minutes?

The Vice-Chair: No.

Mr Waters: Then I would move a five-minute recess while we wait for the clerk to come back with the appropriate information.

The Vice-Chair: Fine. Okay.

The committee recessed from 1025 to 1031.

WORKERS' COMPENSATION BOARD

The Vice-Chair: I call the government agencies committee back to order. We are dealing with the draft report on the Workers' Compensation Board. Our researcher has a couple of small items he would like to relate to the committee, if he would care to do so at this time.

Mr Lewis Yeager: Thank you, Mr Chairman. At the end of the last committee meeting Mr McLean asked me to review the recommendations of the standing committee on resources development when it looked at service delivery at the WCB. I've provided the clerk with a number of copies of those recommendations, which she'll provide shortly.

They basically made four recommendations. Three of them seem to have been already taken up by the board in the presentations we received. These related to an operational review of the service performance of the board; that was the first recommendation. The second called for the enhancement of the office of the worker adviser. The third asked that appeals should be monitored and the relevant decisions communicated to the adjudication staff. The fourth recommendation is perhaps the most relevant to the work we have been doing to date. The fourth recommendation stated that "The board should develop a simple, straightforward client satisfaction survey in order to elicit client feedback concerning the ongoing service improvement efforts of the WCB."

If I recall from the presentations we received from the board officials when they came, they have done some of that type of work, but a recommendation of that sort, asking for client satisfaction information on a more ongoing basis, would work quite nicely into the strategic planning section of the existing report, just as an additional source of information for the planning process. That's about the limit.

I see from the previous recommendations of that committee—

The Vice-Chair: That could be added on page 22, the planning.

Mr Yeager: Yes, that would fit in nicely, perhaps as a recommendation 13 at the top of page 22, with a little bit of discussion.

Ms Murdock: That's the fourth recommendation.

Mr Yeager: That's the fourth recommendation of the little handout, on the page labelled 41.

I believe the remaining three recommendations of that committee have already been implemented, or partially implemented, based on the information Mr King provided.

Ms Murdock: Are you suggesting that we just for the moment give it a number like 13?

The Vice-Chair: No, no. "The board should develop a simple, straightforward client..."—just add that.

Ms Murdock: I have no objections to that.

The Vice-Chair: Okay, that's fine. Then we'll add that as number 13 in the report.

Any other discussion? Ms Murdock, did you have anything else on the report?

Ms Murdock: I know there was some discussion of it at the last meeting, and I know Mr Yeager has supplied the summary of recommendations, but for those who had expressed an interest, the rest of the report with the rationale behind it is quite interesting reading, and it probably would behoove us to look it up, as Mrs Marland suggested, in our files.

The Vice-Chair: Has the official opposition any comments on the report? None. Do the third-party members have any discussion?

Mr Arnott: Is this the 123 report we're talking about?

The Vice-Chair: This is the draft report on the Workers' Compensation Board.

Mr Stockwell: The entire draft report? Do we have any comments?

The Vice-Chair: Yes.

Mr Arnott: Yes, we do. The report is good as far as it goes. Our critic, the member for Waterloo North, has made a number of specific recommendations to the government, in the form I believe of a seven-point plan, of certain things that should be done to clean up the problems at the Workers' Compensation Board, and many of her ideas appear to be reflected in this document.

We're concerned, though, in one respect, in that the report doesn't go far enough because there doesn't seem to be any realization or understanding or plan of action to deal with the unfunded liability problem over the long term. So we have a dissenting opinion we'd like to present to the committee as well to add to what the report suggests.

The Vice-Chair: So you'll just be tabling that report and that will be added, part of the overall report.

Mr Arnott: Yes. I would table it at this time, Mr Chairman.

The Vice-Chair: Tabling a minority report. Is there any other discussion with regard to the draft report? We'll have a motion to adopt this, as amended, and have it sent for translation.

Ms Murdock: That we adopt the—

Interjection: No, no. It's to adopt the whole thing.

Ms Murdock: The whole WCB report? No. I have a few areas I'd like clarification on.

The Vice-Chair: Okay. Let's hear them.

Ms Murdock: First, on page 19, both recommendations 2 and 3. I understand the thinking behind 2, but I would also say that there should be no preclusion from applying for such a position just because you're a politician. The way it's worded here, it implies—and I would hate to think this would be true of any of us in this place—that because you're a politician you should automatically not be eligible for a position in any government agency, let alone the Workers' Compensation Board. I would want that language changed so that implication is not there.

The Vice-Chair: Do you have some wording you would like to see? If you'd like those two recommendations changed, perhaps you could read what—

Ms Murdock: Well, the third one is a different reason. The third one is "The Minister of Labour should hire a qualified insurance executive..." and in my view that's far too restrictive. I would remove "insurance" and just put "qualified executive."

The Vice-Chair: You're asking to remove number 3?

Ms Murdock: Just the word "insurance." While I understand the rationale behind that, and in all likelihood someone with an insurance background would be considered in the upper numbers in terms of eligibility for the job, I'm just saying that it shouldn't be limited to an insurance executive. There are accountants and everything else.

The Vice-Chair: Let's deal with that word. What does the opposition have to say?

Mr Arnott: I like the way it's worded. I think we've come to the point where sound administrative practices have to be applied to the board. In our party we've come to the conclusion that this is the appropriate way to go: to hire someone who is qualified, with previous relevant experience. The practice of hiring a retired politician as the chairman has on balance, to be fair to all the parties that have made appointments, probably not been the most effective way to provide leadership to the board. I think that's a fair statement that all of us would agree with.

1040

Mr Klopp: I understand where you're coming from, but how far do you carry it? Say I'm an insurance agent and I'm also a politician, and I apply for this and I'm the only one who actually applied. It doesn't mean I'm the best one to get it just because I'm an insurance agent. I think we all agree that we want the best person hired. Quite obviously, we've shown that we've taken some major changes around there and moved things around. I hear where you're coming from, but I think we should word it so it's the best person possible and not have that word "insurance."

The Vice-Chair: Let's solve this problem by a vote. The members want this word taken out. We will vote about whether it comes out. All those in favour of removing the word "insurance"? Opposed? The motion is carried. The word "insurance" is taken out of that paragraph.

Ms Murdock: On number 2, if I might, and it will change the wording completely but it should not change the intent—at least I hope the members of the committee see that. "The board of directors, under a new, bipartite structure of the board, would hire the chair and vice-chair, and the hiring would be by consensus of the bipartite board."

The Vice-Chair: We'd better see that in writing.

Mr Waters: The recommendation would be that the board become a bipartite board and that the board would pick them.

Mr Curling: Will the bipartite board have equal representation?

Ms Murdock: Under the act at present the composition of the board is designated, but within the act, basically they have formed themselves into a bipartite board in terms of numbers.

Mr Curling: Equal numbers on each side?

Ms Murdock: Yes.

Mr Arnott: Equal numbers of what?

Ms Murdock: Equal numbers of labour and equal numbers of management. Now, the thing is that under the existing legislation, the chair has a vote; the appointment by the government of the day has a vote on the board. But the board itself, the existing board, has recommended that they operate on a bipartite basis, where they select the chair and the CEO, or vice-chair, as he is presently called.

Mr Arnott: I'm totally opposed to that recommendation. It would appear to further limit the amount of accountability the government has with respect to the Workers' Compensation Board. If the government is prepared to pass on its power to appoint the chair of the board, then it doesn't even have the power of appointment for the senior position in the board.

Ms Murdock: That's what the board itself is recommending.

Mr Arnott: I know, but in my view that would reduce the level of accountability to the government and the people of Ontario, if the government is willing to devolve appointment power.

The Vice-Chair: Could I have clarification? Are you asking that this replace 2?

Mr Waters: Yes.

Ms Murdock: Recommendation 2 is, "The Minister of Labour should end the practice of appointing former politicians to senior executive positions at the Workers' Compensation Board." That would eliminate the Minister of Labour, in any government, from appointing anyone to the position; the board would go through a hiring process. This would fit in with 3, where the qualified person would be hired.

The Vice-Chair: So you're asking us to replace 2? I just want it to be clear for the researcher.

Ms Murdock: Yes.

Mr Arnott: I'm opposed to it.

The Vice-Chair: Okay. All those in favour of having that replace 2? We'll put it to a vote. It's the only way to do it.

Ms Murdock: Alvin wanted to speak.

The Vice-Chair: Sorry, Alvin.

Mr Curling: There could be another factor in whether to delete that completely. What you're replacing it with I think will also make it complex. In other words, if you're taking out 2 altogether—I'm against a recommendation that they should end the practice of appointing former politicians and I agree with you that that shouldn't be there, but to replace it with yours I also disagree with it. Now I'm being forced to vote on the replacement, which I don't like, and I don't like the first one either.

Ms Murdock: If Mr Curling is suggesting that we remove 2 altogether and put nothing in place of that, I would be in agreement with that.

Mr Curling: That I could go with.

Mr Arnott: I still want to register my own personal

position and that of our party, that we've not been well served over the past number of years with political appointments, where former politicians have taken the responsibility as the head of the Workers' Compensation Board. We know that the problems there are persistent. I still believe very, very strongly that if we were to hire someone who has a direct professional qualification and direct professional experience of a similar nature, we're more likely to solve our problems.

Ms Murdock: If I might, Mr Chair, number 3 would handle Mr Arnott's concern. As number 3 is now stated, "The Minister of Labour should hire a qualified executive to chair the Workers' Compensation Board and supplement the executive with an entirely new management team, also recruited...."

The Vice-Chair: I think we could agree with that. We'll just delete 2, and then your motion is redundant, so number 3 will stay. The motion is to delete number 2 on page 19.

Ms Murdock: Yes.

The Vice-Chair: All those in favour? Opposed? The motion is carried. Anything else?

Ms Murdock: Yes, page 25. "The committee therefore recommends" both 16 and 17. We can recommend all we want in this instance, but the act as presently worded precludes us from doing this. We are actually recommending a contravention of the law, and I don't think that's proper for us to do.

The Vice-Chair: Which one is that?

Ms Murdock: Numbers 16 and 17.

The Vice-Chair: And you want to put another one in there?

Ms Murdock: No.

The Vice-Chair: You want 16 and 17 deleted. What does the opposition—

Mr Arnott: Is it in any way inappropriate for a standing committee of the Legislature to recommend a legislative change to the government?

The Vice-Chair: We can recommend all we like, but it's up to the ministry to do it.

Mr Arnott: But there's nothing stopping us from making a recommendation that legislation be amended. That's our job.

Ms Murdock: I can speak as the government here and I have no difficulties. As to 16, there is no way our party would agree to changing the net benefit level, and I'm certainly absolutely opposed to any form of co-payment. I think that makes it pretty clear. We're going to vote against both of them.

The Vice-Chair: And I'm pretty sure the motion will carry. Do you make a motion to delete 16 and 17 on page 25?

Ms Murdock: I so move.

The Vice-Chair: Ms Murdock moves that the committee recommends that 16 and 17 be deleted.

Mr Arnott: Mr Chairman, could we have some discussion on that point?

The Vice-Chair: Yes, you can speak on that.

Mr Arnott: This is part of what our critic and our leader have been saying, the member for Waterloo North and the member for Nipissing. We feel there has to be some sense of fiscal sanity applied to the problems at the Workers' Compensation Board. We look at some of the neighbouring jurisdictions that are part of Canada that we compete with that still show, I believe, a very sensitive regard to injured workers and are endeavouring to deal with this problem, in my view, in a practical way and in a responsible way such that the future liability will be managed, that the sustainability of the system will be assured.

The provinces of Manitoba and New Brunswick specifically have taken action to reduce the net benefit levels, I believe, for new claims, and it's something the government should be looking at in terms of its fiscal responsibility and in terms of the necessity of demonstrating that this Workers' Compensation Board is being well managed.

1050

Ms Murdock: I know where the member's concern is and we've discussed it on any number of other committees. I'm actually not disagreeing with him in terms of the funding problem at the board. No one's disagreeing with the problems that exist at the board in terms of the money and the cost to small business employers, especially in this day and age.

I'm not disagreeing with any of the preamble in the financial position, the discussion in the financial position. All of that makes inordinate good sense. I'm simply saying that with the Premier's Labour-Management Advisory Committee represented on both sides, labour and management—the discussions around all of that are going to be made at some future date by a bipartite board, they are not going to be made by us. But I know that, speaking as a New Democrat, this side will not agree to a benefit level change. It is going to be a consensus decision made by others, should that ever occur.

Having said that, I think when the next statement following 17 says, "The committee held extensive discussions on many aspects of improving the WCB's funding strategy," and we therefore recommend that "The Worker's Compensation Board should develop a new funding strategy which addresses the viability of the system into the future," it is absolutely imperative that remain. Also "The board should conduct consultations with the workplace parties and provide a report to the Minister of Labour."

I do not feel it is this committee's role to put those kinds of specifics in there.

The Vice-Chair: Okay, no further discussion on it?

Mr Arnott: What the parliamentary assistant to the Minister of Labour—

Ms Murdock: Yes, responsible for workers' compensation.

Mr Arnott: —has indicated is troubling to me, because I think what she's indicated is there's a board set up, a bipartite board I think she said, labour and management, advising the Premier on this, that they're coming

together to make recommendations. Is that the same board that had made a recommendation and then it fell apart?

Ms Murdock: Yes.

Mr Arnott: Is there any likelihood in the short term that they're going to be able to get back together with a series of recommendations in the next two to three months? I would suspect they're going to have problems reconstituting that board.

Ms Murdock: History has been that—

Mr Arnott: I suspect nothing's going to be done.

Ms Murdock: —discussions have fallen through before and they've gotten back together again.

Mr Arnott: Right, but I suspect there's not going to be too much action in the remaining mandate that the New Democrats have on this issue and I think, in terms of what she said, essentially if indeed there's a recommendation from this bipartite board to reduce benefit levels, you would accept it, but otherwise not.

Ms Murdock: If there were to be a consensual agreement between labour and management, I personally would have difficulty with it. But if it's a consensual agreement, then far be it from me to tell labour and management that they aren't negotiating properly.

Mr Waters: I guess I get a little bit tired of the inference by the Tories that indeed—I get the feeling that they feel everybody out there is ripping off the system and I know so many people, especially young people who have been injured, who have lost arms, who have lost hands working in industrial places. They're working at minimum wage and their compensation is based on that for life. Damn it, the workers aren't all guilty.

Mr Arnott: Mr Waters, you know I didn't suggest that.

Mr Waters: That's what you keep going back to: "You've got to cut the rates." How do you cut the rates to somebody who is getting minimal to start with and they've lost their arm and their whole livelihood is gone? How do you cut their rates? In fact their rates should be increased as the cost of living because their potential was never allowed to develop.

The Vice-Chair: We have a question before us to delete sections 16 and 17.

Mr Stockwell: Mr Waters went on a bit of a rant there. I'm not sure where he's coming from, because it says in 16, as I see it—I understand the rant, it's typical—but it says right on recommendation 16, I put it to Mr Waters, "benefit level to ensure claimants do not receive more in compensation than they would if they were on the job." Would that not in some way put at ease your concern about the fact that people would be receiving less if the benefit package were cut?

Mr Waters: I guess my concern with this, Mr Stockwell, is that right now we have a number of people who are working at wages, because of the recession, of less than their potential.

Mr Stockwell: Hold it. Can you clarify that last statement for me, please?

Mr Waters: Because of the recession, the wage

structure is down from what it traditionally has been in some cases. We have a number of students out there who get injured as they work as students. They're making minimum wage.

I can tell you of a young lady who lost her arm in a meat grinder; I can tell you about a young man who lost his hand in a wood shaper in a factory. These people were working at minimum wage. They were students, they were going to university. Their potential income would have been much greater than minimum wage, but because of the system that we have, their compensation is hooked to the wage at the time of the injury.

Here's a student who has lost an arm or a hand or has been injured permanently and can never, ever get to the job that he would have had, the income level he would have had. What you're saying is that not only do you not want their compensation to be prorated on what they probably could have had, but you want to cut it back, because you want to cut it down from 90%. I guess I have a problem with that philosophically, because you're putting them on welfare, less than welfare, actually, in a lot of cases.

Mr Arnott: I guess we're looking at the long term, Mr Waters, and you understand the unsustainability over time of a \$12-billion, wherever it goes, unfunded liability. I guess where we differ is that you assume the money is going to come from somewhere, and I guess you assume it's going to come from higher premiums or it's going to come from the taxpayers, one or the other. We're concerned that the long-term viability of the whole system is at stake unless something is done that affects the bottom line. If you're suggesting that this is not the case, I would submit to you that you're not looking at it from a long-term perspective.

Mr Waters: But look at 18.

Mr Stockwell: The difficulty, I think, Mr Chair, through you, is what benefit, what incentive is there for the labour groups to come to the table and negotiate reduced packages under any compensation plan? And you say, "The Workers' Compensation Board should develop a new funding strategy which addresses the viability of the system into the future."

If you're not going to look at reduced benefits, you're not going to deal with the copayment issue, you're not going to deal with—how is it you're going to produce any strategy that is going to do nothing other than increase premiums or tell the taxpayers to fund the unfunded liability?

The rub to me is that you continue to make the arguments such as you made, and valid and fair, and I think we've all heard them and we've all seen them, but by the same token, you don't offer any other solution. How are you going to fund the unfunded liability unless you're going to simply say higher premiums or the taxpayers have to fund the unfunded liability? The question needs to be put. Don't give me the rhetoric. Don't give me the specific examples. I understand it. How are you going to do it if you don't deal with a reduced package or copayments or some kind of program like that?

The Vice-Chair: I wish we could get back to the report and deal with what's in the report, whether we're going to accept some of the recommendations here or not. I think we can talk all the next hour about WCB, for the next days if we want to, but we're dealing with this report and we were referred by Ms Murdock to recommendations 16 and 17. She would like those two deleted. I think it's time we put the motion.

Mr Stockwell: Thank you, Mr Chair, but I think I'd like the question answered.

Ms Murdock: I'll be happy to answer.

Mr Stockwell: If you do delete these two particular recommendations, how are you going to deal with the unfunded liability?

Ms Murdock: It is not for the taxpayer to pay workers' compensation injuries. In 1914, when the Workers' Compensation Board was instituted, it was because employers were being brought to court and were losing in the court for injuries on the job.

The reality is that the whole system was set up to ensure that workers, when injured during work, were going to be receiving some benefits so they weren't out starving on the streets. As a consequence of that, I think Mr Stockwell will agree that the health and safety provisions and so on have increased, child labour was reduced and so on. All of those things have happened.

I think that this report, given the discussions and the preambles to the recommendations, states very clearly this committee's concern about the moneys and the problems at the board.

I don't think and I don't agree with 16 and 17, where we're getting into those kinds of specifics where the change in the unfunded liability and the moneys that would be gathered come off the backs of the workers. It is the worker who got injured. The worker has to receive payment for that injury. I don't care how we all work our rationales around it; those are the realities of the workers' compensation system.

If we do that, then what we're doing is, first of all, in 16 we're saying: "Well, okay, you've been injured on the job, but we're not going to get 90% of net. You're going to get less than that."

Mr Stockwell: I understand all that.

1100

Ms Murdock: And in 17 you're saying, "Oh, and even though you were injured on the job, we're asking you to pay a partial payment so that you can pay for the injury yourself." I mean, like, no.

Mr Stockwell: But you're not answering the question, with all due respect. The question is, if you do strike those two recommendations, you refuse to even examine those two recommendations—

Ms Murdock: Yes. You leave it then to 18, where, "The Workers' Compensation Board should develop a new funding strategy which addresses the viability of the system into the future," on the basis of the previous discussion and articles in there, where it is going to be and the board itself has recommended a bipartite system.

Mr Stockwell: So, with all due respect, then it's just

more rhetoric. You've given them no recommendations—

Ms Murdock: Speak for yourself, Mr Stockwell.

Mr Stockwell: That's what I am.

Ms Murdock: Well, we know.

Mr Stockwell: I understood I was speaking for myself when I said it's just more rhetoric.

Ms Murdock: It's the rhetoric, yes.

Mr Stockwell: But the bottom line is this: I heard what Mr Waters said. You said nothing different. You've said that we are cognizant of the unfunded liability, but we have no idea, no concept, no game plan in dealing with the unfunded liability except to say, "We'll strike a bipartite board," which constantly breaks down, constantly can't get agreement, and they'll solve the problem.

Ms Murdock: No. I'm not talking the PLMAC on this. I am talking about the board itself as a bipartite body.

Mr Stockwell: And if the board comes forward with recommendations to reduce the benefit levels and talk about enhanced accountability through copayments by claimants?

Ms Murdock: It'll be a consensual agreement; that's right.

Mr Stockwell: And you would then buy into it?

Ms Murdock: If a bipartite group were to make that decision.

Mr Stockwell: Then can I ask finally one last question? What possible benefit would it be for union-represented or worker-represented people on a bipartite board to reduce payments, reduce benefits or talk about copayments? What possible benefit would it be to them? I mean, deal in reality. What possible benefit would it be for these people to come to the table, negotiate lower payments, negotiate copayments from workers? What possible motivation could there be for these people to do that?

Ms Murdock: But you are saying, Mr Stockwell, that it is the only way to resolve the unfunded liability, and I disagree with you. There are all kinds of other options that can be made.

Mr Stockwell: Name one.

Ms Murdock: Well, the board has frozen premiums to employers for the next while. I'm sure that they're going to be—

Mr Stockwell: How is that reducing the unfunded liability?

Ms Murdock: But the thing is—

Mr Stockwell: Name one alternative.

Ms Murdock: Well, would you mind waiting?

The Vice-Chair: For Hansard's ease, we should have one speaking at a time.

Ms Murdock: Thank you very much, Mr Chair. That means there could be all kinds of recommendations.

Mr Stockwell: Name one.

Ms Murdock: Just what we've done on our own public service salaries. If you freeze it, you save money. You can freeze pension levels. There are all kinds of

things that can be done, but it's not for us to say what they are, I don't think.

Mr Stockwell: Name one. Freezing will not reduce the unfunded liability. Freezing may freeze the unfunded liability. Name one recommendation you've spoken—

Ms Murdock: If you're not putting that money out—

Mr Stockwell: —about that is going to reduce the unfunded liability.

Ms Murdock: Excuse me, Mr Stockwell, but if you're not putting the money out, then it can be applied.

Mr Stockwell: Then it can't what?

Ms Murdock: It can be applied. Then there is a whole aspect of we don't know what's going on at the board in terms of the efficiencies that are going to result, the whole idea of the technological change that was instituted just pre-1990 with all the imaging equipment that was put in. All that has been frozen. The thing is, that does save money when you have not got your staff off the equipment and not utilizing it. It does. There are all kinds of efficiencies within the system which, if you—well, I don't know if you were on the committee when it sat here for a week, when the board people were here and explained many of the things they are already doing and have reduced the unfunded liability as it is over the years.

Mr Stockwell: No, reduced the growth of the unfunded liability. Nobody's reduced the unfunded liability.

Ms Murdock: But it would have grown dramatically otherwise.

Mr Stockwell: So it's growing less dramatically. It's still growing.

Mr Arnott: And dramatically.

Mr Stockwell: And dramatically, yes.

Ms Murdock: Well, I am not going to agree. When all is said and done, Mr Stockwell, I'm not agreeing to 16 or 17.

Mr Stockwell: Well, when all is said and done, we'll be in Shangri-La one day.

The Vice-Chair: We've come to the time when I think we should put the vote. There's no further discussion. Ms Murdock has moved that sections 16 and 17 be deleted from the report. All those in favour? All those opposed? The motion is carried.

Mr Yeager would like a clarification.

Mr Yeager: I was wondering if the committee would want these former recommendations moved into the text as just suggestions by some of the members, to get them on the record, and then a statement that no recommendation could be derived from them.

Ms Murdock: How would you do that, Mr Yeager?

Mr Yeager: Take, for example, former recommendation 16. "Some members felt that the Workers' Compensation Board..." blah, blah, blah. "Other members suggested that the board should investigate some form of copayments." Just move it into a textual discussion there and then not have a recommendation come out of it; that's something that's done often. I just wondered if you wanted to do that.

Ms Murdock: The sense would be that some members—I wouldn't feel comfortable with even leaving that idea in there, although it's been discussed. You could put in that there was a discussion around that—

The Vice-Chair: That's all he wanted to put in.

Ms Murdock: —but that the committee had no agreement.

The Vice-Chair: That's right, no recommendation.

Mr Yeager: Yes, that it did not develop a recommendation around this topic or something of that sort.

Ms Murdock: I don't want it softened. We have absolutely no agreement with 16 and 17, as long as that's clearly understood in the language.

The Vice-Chair: The next one you have is which?

Ms Murdock: The last one is recommendation 21: "The board should declare a moratorium on all new types of entitlements, such as stress compensation, pending a long-term plan to manage the Workers' Compensation Board's unfunded liability." While I agree with the thinking behind it, I don't believe we should be recommending a moratorium on anything, so I ask that it be removed as well.

Mr Stockwell: You're in fact suggesting that you don't support 21 so that there could be expansion of benefits and programs?

Ms Murdock: No, not necessarily. It conflicts with the independent panels that already exist.

Mr Stockwell: You're not averse to expansion? You're not opposed to expansion?

Ms Murdock: It's not for me to decide, Mr Stockwell. It's for the board to decide, or the independent panels such as the Industrial Disease Standards Panel.

Mr Stockwell: We could direct the board, request the board—we probably could direct it, I suppose—

The Vice-Chair: Recommend; that's about all we can do.

Mr Stockwell: —recommend, yes, not to cover such conditions as workplace stress, correct?

Mr Klopp: Is that what you're recommending?

Mr Stockwell: I'm asking, could we not? If we don't do that and we allow them to examine that, are we not therefore expanding the opportunities for an increase in payments and so on and so forth, that they take into consideration workplace stress?

Ms Murdock: If we don't do that, they would automatically take it to mean they could? Is that what you're saying?

Mr Stockwell: We could give them a direction by saying, "Don't take into consideration workplace stress," to keep the lid on the unfunded liability.

Ms Murdock: I think we've made it very clear in this report that the unfunded liability is a concern.

Mr Stockwell: It would seem to me that if we don't give some direction to discussing workplace stress, the board then would feel—

Ms Murdock: Well, if you could word it in such a way—I would not agree to the moratorium statement.

Mr Frankford: It seems to me really contrary to the philosophy, and probably policy, to exclude things. We have no idea what new types of injury are going to be developing as the nature of work and industry develops, and I think it would be unsustainable to preclude new types of claims. We perhaps have got a bit sidetracked by the stress issue as though that's the only thing, but it seems to me we could have all sorts of new injuries or diseases.

1110

The Vice-Chair: Could I have clarification? Is Ms Murdock asking that 21 be deleted?

Ms Murdock: Actually, I was willing to look at some change in language, but now that I've read the PC caucus's dissenting report—

The Vice-Chair: I don't think that was to be made available until after we're done with this report. That's just there for your information until after this report is finished. If you're going to move to delete 21—

Ms Murdock: I move to delete.

The Vice-Chair: Let's deal with that. All those in favour of deleting 21? All those opposed? Section 21 is deleted from the report.

That's the end of your recommendations?

Ms Murdock: That's the end of my recommendations. And thank you very much, Mr Yeager. I appreciate all the time you've put into this.

Mr Yeager: Could I ask for one little bit of clarification?

The Vice-Chair: You sure can.

Mr Yeager: There was some discussion on page 20, recommendation 7, last week, concerning the word "systems." "The Workers' Compensation Board should immediately find ways to tighten controls on access to WCB systems." Is insertion of the word "computer systems" adequate there? Is that what you were trying to get across?

Ms Murdock: Not just the computer systems, I don't think. I believe it was Ms Carter who raised that issue. That was the question she was asking, what systems they were, but my own view is that it wasn't just the computer systems.

The Vice-Chair: Do you want to leave it the way it is?

Ms Murdock: It included human resources systems, communication systems and so on. I think it included all of the systems.

Mr Yeager: Would you like to approve some wording before—

Ms Murdock: "Operating systems."

The Vice-Chair: Are there any other sections, Mr Yeager, you were interested in clarifications of?

Mr Yeager: No, I think that's the only one that was ambiguous.

The Vice-Chair: With regard to the report, could I have Ms Murdock move the adoption of the report?

Ms Murdock: I will so move to accept the report, as amended.

The Vice-Chair: All those in favour? Are you going to vote, Mr Klopp?

Mr Klopp: Yes. Sure.

The Vice-Chair: Those opposed? The motion is carried.

Now we have a dissenting report from the Progressive Conservative members. Mr Stockwell, did you want to address that?

Mr Stockwell: By way of commenting on our report, you kind of flow through the report that was just adopted and—I suppose, if there's a colossal waste of taxpayers' money, it has to be when we write these kinds of reports.

Mr Klopp: You are referring to your report.

Mr Stockwell: I'm referring to the report you just adopted. It's absolutely shameful that this committee can sit through this kind of public debate and simply omit and not deal with one of the most pressing and urgent issues surrounding the Worker's Compensation Board, that being the unfunded liability.

As a caucus, we believe there are many facets involved in workers' compensation, not the least of which are benefit levels, payment packages, reasonable living wages and so forth. But the fact remains that one of the most pressing and urgent things that must be dealt with is the unfunded liability. Clearly this government, through this committee, represented by the parliamentary assistant to the Ministry of Labour responsible for workers' compensation—

Mr Curling: What a title.

Mr Stockwell: Quite a title—absolutely has no care, concern or real policy plan to deal with the unfunded liability. They talk in code words about "efficiency savings" at the board level and some kind of "new program" development. You know full well that is absolutely a lot of bunk. There is no chance that efficiency savings at the Workers' Compensation Board is even going to begin to address the unfunded liability problem.

They seem to be crowing over there about the fact that the growth of the unfunded liability has retarded to some degree over the last couple of years. Well, I would add that there are probably a lot fewer people working than there was when they came into government; maybe that has something to do with the growth factor.

Further, the growth factor is still dramatically increasing. There's a growing concern that the unfunded liability continues to grow year in and year out. When we want to deal with this issue as a third party, in opposition, and when the report from legislative research puts forward some reasonable recommendations to begin to deal with the unfunded liability, you're met with this ideological socialist opposition that is an absolutely head-in-the-sand, Shangri-La attitude towards the unfunded liability.

They continue to bellyache about the fact that they are downgraded on a yearly basis by the financial institutions of this world. The number one reason they're continually downgraded by the financial institutions is because of the unfunded liabilities and the debt and deficits they keep absorbing year in and year out. It seems counter-

productive to me to complain and worry about the debt and the higher cost of the debt and the downgrading in your credit rating when you continue to take no approach to dealing with the unfunded liability.

I don't think these were controversial recommendations, but I knew full well that this head-in-the-sand approach taken by this government would not deal with it. That's why we came forward with our dissenting opinion. We did so because we understand that the biggest problem in WCB today is the unfunded liability. Do you realize that if you tried to go out today and collect that unfunded liability through premium increases, you'd bankrupt thousands and thousands and thousands of businesses, literally bankrupt them, because they could not afford to pay the premium for this completely mismanaged operation at the government level.

So the question needs to be asked, how are we going to deal with the unfunded liability, and then you've got to have a plan. The government's plan consists of striking a couple of bipartite committees to yick about this problem, like they've yicked about the problem for the last three years. We offer a comprehensive review, an overview that needs to be undertaken immediately if we're ever going to bring some tenet of reality back to the unfunded liability issue.

Mark my words: When people look into locating in this province, at issue is the tax level, the municipal tax level, the personal tax level, the corporate tax level. Also at issue are these unfunded liability charges that potentially could jump up and bite them in five or 10 years, should this government or the next government decide they have to get a handle on this because they can't afford to see their credit rating downgraded any further.

I put in the dissenting opinion because it's an opinion that I share with all members of my caucus. It's an opinion that I think begins to deal with a long-term approach to the unfunded liability. I don't believe any citizen of this province is prepared to say today that they accept the fact that the unfunded liability continues to grow. It's a millstone around our necks, it hinders us in attracting new business, it hinders our financial capability and does nothing but increase the cost of government because it significantly contributes to the downgradings we receive worldwide.

I put it forward because I knew the salient recommendations brought forward by legislative research would not be accepted by this government because of its ideological, head-in-the-sand, socialist-pap approach to finances, which is, "We can't really concern ourselves with finances," either because they're way too complicated or simply "We don't want to deal with them because it's not our constituency."

I'm proud to represent a caucus that can put in a dissenting opinion that deals with the issue head-on. I hope that when the election rolls around we'll allow ourselves the opportunity of debating the unfunded liability, because I think the people in this province are very interested in WCB.

Finally, with the people I speak to about WCB, there is an absolute venom-spitting hatred for that corporation, its inefficiencies, its grotesque, overregulated, overbloated

operation that is so messed up, I'm not certain it's not going to take more than three or four decades to fix this absolute, black cesspool hole we've made.

The Vice-Chair: Mr Yeager would like to comment.

Mr Yeager: Just a point of clarification. While on occasion legislative researchers are asked by committees to develop recommendations, in this case the report recommendations came entirely from members of the three caucuses at our previous meetings and none was developed by legislative research.

Ms Murdock: If I might, Mr Chair, that's why I wanted to thank Mr Yeager for all the work he's done on this. I recognize that.

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ONTARIO HUMAN RIGHTS COMMISSION

The Vice-Chair: The next one is the Ontario Human Rights Commission. Does everybody have a copy of the report? Mr Pond, do you have any comments?

Mr David Pond: No, I'm in the hands of the committee. As you recall, we left it last time that the caucuses would come back to this meeting with their ideas, so I'm in your hands.

The Vice-Chair: Do the government members have any concerns with regard to any of the sections in this Human Rights Commission report? Mr Curling, did you have some?

Mr Curling: The government has no comment on that? As a matter of fact, the recommendations here are all accepted and all that? I expected them to make some comment. I do have some comments.

Let me start with page 10. Was that the impression of the committee, just below the bullet points, that "The committee was impressed by this program of renewal," and they spoke about how things were progressing in the commission, "as well as Ms Brown's personal commitment to the task of reforming the commission"? I'm a little bit uncomfortable with that.

I'm comfortable with "Ms Brown's personal commitment to the task of reforming the commission." I saw that indication there when she presented her position. But I wasn't quite sure it was overwhelming that we were impressed by the program renewal itself. I just wondered if that was sort of the consensus. That is quite heavy wording for all of us to say, "The committee was impressed by this program of renewal." I'm just a little bit troubled by that.

As a matter of fact, the second paragraph of that actually indicated some of my concerns too, that "the committee did hear abundant testimony"—it sounds contradictory to me—"from other witnesses working in the field of human rights which appears to indicate that delays in processing complaints continue to be a problem." There is a little bit of contradiction in those two things. That's what I was concerned about.

But again, I wanted it to be noted on record that yes, I was extremely impressed with Ms Brown's personal commitment to have this reform, but there are a lot of problems that we still have in that area.

The Vice-Chair: Are there no other comments?

Mr Waters: I have a few comments. Recommendation 1 on page 26 says, "The government of Ontario should formally respond to the Cornish report."

We've been in a process of changing, through evolution, indeed the Human Rights Commission. So far we've responded and taken action on a number of things that are in the Cornish report. But I really have a problem where, if indeed we were to do the whole Cornish report, basically what you're saying is: "Throw the baby out with the bath water. Don't take the good parts of the commission and evolve and fix the problems."

You're saying, "Rip it down and throw it out and start over." I think that I have a real problem with that.

Mr Curling: What page are you on?

Mr Waters: Page 26.

Mr Curling: All right. I wanted to comment on that because, with all respect—and I have great respect for you, Mr Waters—the Cornish report is commissioned by the government, paid by the government, rushed by your government to complete it quickly because they want to respond to it. Now you're telling me, "Well, we don't really have to comment on it formally."

What we're saying here is that they should respond to this report formally. I mean, you're just hanging out here and saying, "Okay, we took two lines out of the Cornish report and we're doing something about that." We're saying the minister has not formally come to the House and said, "Yes, we have received this report and there are areas in it that we like and areas we don't like."

That's why we get people like Mary Cornish and people like that to look at things formally. But to tell me now we've had it and put it on the shelf, that's why people are sceptical about task forces and all these committees. It's a sham, and we don't want that to go on as a sham. We feel that Mary Cornish made some very, very good comments. What we need to do, the leadership part of it where we spent all this amount of money, is to then say whether we don't agree with what she's saying or we agree with some or the other. You're saying we don't have to comment on it.

Mr Waters: Nobody is saying that we don't agree with the Cornish report or parts thereof.

Mr Curling: You haven't said anything.

Mr Waters: What we're saying is that we're acting upon the Cornish report, and indeed we're initiating a number of things. We are taking some of the things she's talked about in her report and we're dealing with those things: the administrative merger between the three equality groups, the eight organizational initiatives and administrative mergers of tribunals and all of those things. But to create an expectation that overnight we're going to change the entire Human Rights Commission, I would have a problem with that, and we do as a government.

Mr Curling: You're missing the point completely. It says, "The government of Ontario should formally respond to the Cornish report." Did I say to you to accept it or reject it? Just respond to it formally, and the minister stand in the House—and I've asked her many, many times in committee and in the House, "Would you mind

responding to this formally?" You're telling me you've initiated quite a few things in the Cornish report. Name two. Well, name one.

Mr Waters: I already have.

Mr Curling: What?

Mr Waters: I've talked about the fact that the three groups have come together. We're having cross-training. We're making it so that when you deal with equality groups, everybody knows where everybody else is. That's a very important step right there.

The Vice-Chair: Maybe I can have a clarification from the committee. Mr Waters referred to this item 1. Are you asking that that be deleted?

Mr Stockwell: What page is that?

Mr Waters: Page 26.

The Vice-Chair: "The committee therefore recommends that: (1) The government of Ontario should formally respond to the Cornish report." Mr Waters, are you saying that you don't agree with that, you want it deleted? What's the reason behind your query?

Mr Waters: I guess I have a problem with the wording. What the recommendation is is basically that we should respond. Well, we have been responding.

Mr Curling: Formally.

The Vice-Chair: Then it's fine then, if you've been responding.

Mr Stockwell: What do you want to say, that you shouldn't respond?

Mr Waters: No, it's implying that we indeed haven't listened to Cornish.

Mr Stockwell: No. I think you're reading too much into that, Mr Waters. It just says, "The government of Ontario should formally respond to the Cornish report." It hasn't said that you haven't responded in some fashion, some way. It's just saying that considering this report is before the Legislature, before the government, to lend the government credibility, why would it not formally respond to this report, addressing the issues it wishes to accept and suggesting reasons why it would not accept the others? I mean, you are government. That's what goes with being government. People issue reports and then you make decisions on those reports. If you're not prepared to do that, then why did you get yourself elected?

Mr Waters: And indeed we are—

The Vice-Chair: I think what I want to know as Chair is, do you want it changed or do you want it deleted? I think that's the question.

Mr Waters: I just have a problem with the wording, and off the top of my head I can't think of better wording to put in. That's the problem.

Mr Stockwell: Do you want to drop "the government" and just say "government of Ontario"?

The Vice-Chair: If you want to think about that one for a minute, are there any other issues in the report that somebody had some concerns about?

Mr Curling: On the employment equity, since you're on that page and I don't want you to move around—

The Vice-Chair: Page 26? Okay.

Mr Curling: Yes. I raised the concern under the employment equity that it did not reflect the diversity of our community, and they didn't have a composition there. They were going to get back to me, because there are two things. The commissioner stated to me that she didn't collect statistics in that manner, and I was concerned that the Employment Equity Act was asking employers to do so, yet the Employment Equity Commission itself did not do so, and they were going to get back to me on this. I had concern about that, whether or not it was reflecting the diversity of our population, that part of it.

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I also raised the question that the Employment Equity Act or the Employment Equity Commission was really a systemic discrimination branch that came from the Human Rights Commission, and that was made because the fact is that within the Human Rights Commission there's a systemic branch which deals with many systemic problems, but employment was one of the major areas where we find systemic discrimination.

My point was that they were taking a section of that systemic discrimination branch and calling it employment equity over here. I want that to be raised because of a little concern I have that it would then be a duplication and how the role would be played, because it has an impact on the Human Rights Commission and also the employment equity.

The Vice-Chair: Are you looking for a rewording of that?

Mr Curling: No, I'm not looking for a—you're right again. Actually, that's okay. I'm just saying that the report itself I think should reflect some of that, but I have no problem with this wording and it should be enacted immediately. After the government sitting on it for four months, we have the regulations not even being drafted.

The Vice-Chair: Okay, that's fine. Could we go back to Mr Waters now and do you want to leave that as it is or was there some—

Mr Pond: Yes, a clarification. Mr Curling, are you recommending that the committee formally recommend that the Employment Equity Act should go into effect as soon as possible?

Mr Curling: Yes.

Mr Pond: The government members should hear that.

Mr Curling: It's in there.

The Vice-Chair: That's on the bottom of page 26.

Mr Pond: Yes, but it's not written up in the draft report as a formal recommendation. Mr Curling is suggesting that it be reworded as a formal recommendation.

The Vice-Chair: That's right, it's not there as a recommendation. Does the committee wish to recommend that the Employment Equity Act go into effect as soon as possible?

Mr Waters: The reality is that it's waiting for royal assent at this time; it's passed. Right?

Mr Pond: It's passed, but I think the issue is implemented: proclaimed and implemented.

Mr Curling: Yes. You have the regulation that you

pushed through this Employment Equity Act from December and told us that we are holding it up. It's always that the Liberals are holding it up. We said, "Okay, it was passed," and the fact is, yes, it was personal towards the opposition but the fact is you have the regulations, you are sitting there for four months and we're saying we want to recommend that the Employment Equity Act go into effect as soon as possible. The regulation is the one that's holding it up to make it effective. Why don't you put it through?

Mr Stockwell: We all know why they don't want to put it through.

Mr Curling: The unions will give them a hard time.

Mr Stockwell: They don't want to put it through because they want to put it through so it'll get implemented before the next election because then they'll get major heat from their union friends and they don't want that.

The Vice-Chair: I would think that the government members should indicate whether they want that as a recommendation.

Mr Stockwell: They don't want that. Just strike it and get it over with. Admit it.

Mr Rosario Marchese (Fort York): Can I just give an opinion here?

The Vice-Chair: You're welcome to do that.

Mr Stockwell: Once you've admitted it, your souls will be cleansed.

The Vice-Chair: Mr Marchese has the floor.

Mr Marchese: I think the recommendation at the bottom says, "Does the committee wish to recommend that the Employment Equity Act go into effect as soon as possible?" My opinion would be, yes, we do, and I would hope that the committee would feel that we should, as it relates to this particular recommendation.

While I have the floor, there are things in the body of this report that are not part of the recommendations at the back. I'm taking you back perhaps to the committee's work, but have you all dealt with the recommendations or the suggestions that are made on each of the pages that precede this? We haven't done that?

The Vice-Chair: It was sent to each party for their review. Each party was to come back, if they had some changes or recommendations that they wanted to make, and that's what we're dealing with now.

Mr Marchese: I understand.

The Vice-Chair: You may have some sections that you want to deal with.

Mr Marchese: But in some of those sections, there are questions that are raised and provoke answers or at least ask the members whether they want to move in that direction or not, and my sense would be to suggest that we do that.

The Vice-Chair: We'll deal with this page now and then we will give you the opportunity, if there are other pages you want to deal with, to raise those issues.

Mr Marchese: I'm only trying to help the committee.

Mr Stockwell: He's a lot of help. They were given an

opportunity to comment on the report and they brought up one slightly innocuous comment, then we went down to this recommendation, and then we were supposed to be done.

Mr Waters: No.

Mr Stockwell: You were asked to comment and you didn't have any comments in the beginning. You were happy with the way it was written.

The Vice-Chair: Could I ask the committee if it wants to make the recommendation "that the Employment Equity Act go into effect as soon as possible"? If so, I'd like a motion.

Mr Curling: I so move.

The Vice-Chair: All those in agreement that it be one of the recommendations? Opposed, if any? The motion is carried.

Mr Waters, could we deal with that one of yours with regard to the Cornish report? Do you want some change there or do you want it left the way it is?

Mr Waters: I've thought about this. I've read it over again. If the minister responds, as long as everyone's happy that it will include the initiatives we've done already and that we're using Cornish as a basis for development, I have no problem with it.

The Vice-Chair: That's fine. Then we'll leave it as it is.

Mr Stockwell: Good.

The Vice-Chair: Do the committee members have any other recommendations they want dealt with at this time, other than Mr Marchese? He's here as a non-member but he can have all the input he wants—to a degree.

Mr Marchese: There's an issue I would like to talk about on page 18.

The Vice-Chair: If there's a recommendation there, we should deal with that recommendation.

Mr Marchese: Part of what ARCH and CERA argue is "that the solution to the frustrating delays at the commission which their clients experience is to allow complainants to proceed directly to a hearing. The commission should no longer have exclusive jurisdiction over complaints.

"This recommendation would address the problem of delay and backlog by empowering complainants to circumvent the commission bureaucracy entirely. ARCH added that this reform would likely encourage respondents to settle complaints more quickly than they do under the existing code. Currently, because of the backlog and the delays it causes, respondents lack an incentive to settle expeditiously."

That raises particular problems. If the complainant were to go directly to a hearing, it would raise the problems of backlogging the hearing process and/or needing a permanent full board to deal with that. It raises a number of questions if you were to do that.

On the other hand, ARCH and people like CERA argue that they have been stymied or have had difficulties dealing with the number of commissioners with respect to their cases in that investigative process and in the

decision-making process. They say, "When we go directly to the hearing, we have success in terms of being heard and in terms of making our case to the board as opposed to the individual commissioner," so they argue that they should have a mechanism to go directly to a board hearing.

My sense—I'm interested in listening to others as well, whether they feel that would create yet another backlog at the board of inquiry level, or whether they think that if they go directly to the board or allow for a mechanism for them to do so, that would encourage the respondents and the complainants to come to a much quicker agreement or that it would directly settle those issues a lot more quickly than by allowing this other process, which is very slow, to go on. My sense would be that it would be useful to go in the direction they suggest.

The Vice-Chair: Can I have a clarification? On both of these pages it says, "Does the committee wish to recommend..." "Does the committee wish to endorse this recommendation?" Are you saying you think there should be some endorsement of some of these recommendations?

Mr Marchese: Yes. I'm in favour of moving in this direction and was looking to discussion from the other members, both government and opposition—

The Vice-Chair: If there's going to be some endorsement, I would like to see something in writing, either recommendations from our researcher or from the members, of what the recommendations would be and how they would be worded.

1140

Mr Stockwell: I assume the recommendations would be much like the last paragraph in the statement: "The solution to the frustrating delays at the commission which their clients experience is to allow complaints to proceed directly to a hearing. The commission should no longer have exclusive jurisdiction over complaints." I assume that's what you're recommending.

My dilemma is that you've got a funnel this big and so much water's got to go through it, and if you have too much water it backs up. It really matters not whether you go to a different sink. If the opening's just the same, you're still going to have the same amount of backed-up water.

The argument you put is as simple as expanding, making the complaint process larger through the process it is today. Maybe I'm not making myself very clear. Just expanding the process as we have it now would do the same thing, in my opinion. Maybe you can answer me why you don't think it would do the same thing. I see words in here like "respondents to settle complaints more quickly than they do under the existing code." Why would it encourage respondents to settle complaints more quickly? Why would that happen?

I understand when you go before a master in the legal process, it allows you to settle disagreements more quickly. Rather than going through a full-blown judge etc, they try to get you to reach an agreement. Why is it you think they would be settled quicker?

The Vice-Chair: I'll take the floor just for a minute and then you can answer that question. I want to get a

sense from the committee. If there are going to be some changes made to this report, we're not going to be able to finalize it today, that's very clear. Our researcher could take advice from the members on how they feel the recommendations could be changed. I'll allow you to answer the question and then we can proceed. If we're not going to be able to finalize it today, we might as well have something come back to us that we can sit down and look at.

Mr Marchese: There are several points I would make. First, the experience we've heard from a number of commissioners who are coming before this committee, and part of the research, indicates that a lot of these hearings take a long time, they're protracted. For a number of different reasons they become protracted. Some have argued that the respondents are the ones who have an interest in delaying it, because if they tire out the claimant, that would force the person to simply say: "This is too long, too exhausting. I'm tired. I'm just going to drop the whole case."

If you went immediately to a hearing, it would have to be dealt with, for one. The board of inquiry would solve it rather quickly as opposed to having to wait that long. Second, if they knew this would go to a hearing immediately, it would force the two people, both the respondent and the claimant, to settle more expeditiously and perhaps much more fairly than through the current system, which drags it all out.

Mr Stockwell: That would happen for about a year and then you'd back up again, because everyone would be going through for a hearing.

The Vice-Chair: We'll give Mr Curling a few comments.

Mr Curling: I'm going to go by your direction, Mr Chairman. I agree with you that the government side seems to have a lot of problems with this report. I would say we just deal with what is down here, "Does the committee wish to recommend that the Human Rights Code be amended to reflect this recommendation..." as stated above. We would just say no.

The Vice-Chair: Mr Waters for a final comment, and then we will close off.

Mr Waters: It's frightening: I think Chris and I are coming from the same point of view, and this is really scary. I don't see moving directly to a hearing as resolving the problem. I'd say there's probably a way within the commission to deal with that faster and expedite it before you get to a hearing. I would hope they start getting down—in fact I know they are working towards expediting it before the hearing so that you don't get to the hearing process that drags it out.

Mr Curling: Mr Chairman, on a point of order: If we're going to deal with it as you said, I could do my little 10-minute speech too. Each of them are going to make their comments for the record. I'm saying, do we want it to go on? You have it in front of you: Yes or no? If there are a lot of arguments, put it in writing, as the Chairman said.

The Vice-Chair: We'll refer it to our researcher and we'll come back at another time.

Mr Stockwell: What's he going to research?

The Vice-Chair: The comments that have been relayed here will be made into some recommendations, and it's up to the government members to deal with it.

Mr Stockwell: Let's just vote on it. What do we need to research? That's why he wrote this.

The Vice-Chair: They want to make some recommendations, is my understanding.

Mr Stockwell: Well, make them.

The Vice-Chair: It's just not that easy. This will be tabled because we cannot finalize it because the government members want to make some recommendations. When would be an appropriate time to come back and deal with this? Could I have the committee's attention? We have an hour on the morning of the 27th when we will deal with it and try to finalize this report.

Then we will have all the reports translated upon completion of the condition. Agreed? Agreed.

Next on our agenda is a subcommittee meeting to select intended appointments, for review of the certificate—that was April 7. Subcommittee members stay, and the rest can go.

The committee adjourned at 1146.

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Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Arnott, Ted (Wellington PC) for Mrs Witmer

Klopp, Paul (Huron ND) for Mr Mammoliti

Murdock, Sharon (Sudbury ND) for Ms Harrington

Stockwell, Chris (Etobicoke West/-Ouest PC) for Mrs Marland

Also taking part / Autres participants et participantes:

Marchese, Rosario (Fort York ND)

Clerk / Greffière: Mellor, Lynn

Staff / Personnel:

Pond, David, research officer, Legislative Research Service

Richmond, Jerry, research officer, Legislative Research Service

Yeager, Lewis, research officer, Legislative Research Service

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Third Session, 35th Parliament

**Assemblée législative
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Troisième session, 35^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 20 April 1994

**Journal
des débats
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Mercredi 20 avril 1994

**Standing committee on
government agencies**

Subcommittee report
Intended appointments

**Comité permanent des
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Rapport de sous-comité
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIESCOMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Wednesday 20 April 1994

Mercredi 20 avril 1994

The committee met at 1003 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr Allan K. McLean): We first have the subcommittee report. Do we have a motion that the subcommittee report be accepted? Ms Carter.

Ms Jenny Carter (Peterborough): Sure.

The Vice-Chair: All in favour? Opposed, if any? Carried.

INTENDED APPOINTMENTS

CLARE LEWIS

Review of intended appointment, selected by third party: Clare Lewis, intended appointee as chair, Gaming Control Commission.

The Vice-Chair: Mr Lewis, if you'd like to have a few opening remarks, fine.

Mr Clare Lewis: If I may, Mr Chair. Thank you very much. May I first of all introduce Mr Duncan Brown of the Gaming Control Commission. He is the director of gaming control for Ontario and chief executive officer of the commission. He is here today, along with members of the government offices, to observe the proceedings with your permission.

I very much appreciate the invitation of the committee to appear before it and the opportunity you are affording me to hear and respond to your questions and concerns. I must say that I am most honoured to have been nominated by the minister, the Honourable Marilyn Churley, to be the first chair of the newly created Gaming Control Commission of Ontario and to be asked to be considered by you for that appointment.

When Bill 8, the proposed casino legislation with its attendant gaming control provisions, was before the House and committee last year between, I think, July and December, as an Ontario resident I was rather interested in the debate the bill sparked and the questions it raised.

I actually did watch some of the proceedings on the legislative channel and I have since obtained and read the whole of the proceedings in Hansard. I'm of the view that the debates of the members of the House raised some very significant issues and provided a vibrant and helpful exchange of views on often very contentious matters on which there were divergent opinions. I say "helpful" because I believe that many of the issues raised require a credible response by government and by agencies of government engaged in the industry.

On a personal level, I cannot say I ever foresaw casino gambling in the province of Ontario. On the other hand, I can equally say that I never foresaw lottery gambling in

Ontario either and we've had that for a great many years.

What the debates did for me was convince me that if gambling in this province is to expand, as it clearly has through the exponential increase of charitable gaming with its ancillary growth of a commercial gaming industry and with the advent of casino gambling, then the public of this province and all the stakeholder groups have an absolute need for diligent, firm, fair, open and cost-effective regulation of the industry.

The Vice-Chair: Just a minute, Mr Lewis. We have 20 minutes each.

Mr Lewis: Oh, I'm sorry.

The Vice-Chair: You're eating into the 20 minutes each time and I know that members have some questions.

Mr Lewis: By all means.

The Vice-Chair: If you could make it as short as possible.

Mr Lewis: I look forward to your questions.

The Vice-Chair: Good. Thank you.

Mr David Tilson (Dufferin-Peel): I appreciate your comments with respect to the debate in the House. One of the fears with respect to gambling casinos, which has been raised in every jurisdiction in the world, is with respect to crime and that gambling casinos breed crime.

As you know, the former Attorney General, Mr Hampton, as a law student—I believe he was a law student and I don't mean that in a demeaning sort of way, but as a law student—

Mr Lewis: I was one once.

Mr Tilson: —so was I—prepared a report for the then Progressive Conservative government in Ottawa with respect to gambling. It was a very detailed report. I'm sure at that time he had no dreams he would one day become the Attorney General of the province of Ontario but he, as you know, as I'm sure you've watched that issue where it's been explained to you, made it quite clear that every jurisdiction in the world that has got into gambling casinos breeds crime.

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You've been a judge; you've had extensive experience in the legal community; I think you've been a defence counsel. People in various communities, whether it be Windsor—and notwithstanding what the minister's saying that this is an experiment; it's quite clear, the writing's on the wall; you're going to be the czar of gambling casinos all across this province. Communities are afraid of crime entering their community, whether it be Toronto, whether it be Niagara Falls, whether it be Ottawa, all of

these various places. Everybody and his mother wants a gambling casino. What are you doing to do to alleviate the concerns of residents of these communities?

Mr Lewis: I agree with you that Mr Hampton raised that issue in 1984 and I can only hope that, as I recognized he voted in favour of this legislation, he's been able to be persuaded by his government that there are sufficient checks in place to answer the issue. However, I think the issues of concern to the municipalities are quite legitimate. They have an absolute right to fear and seek and demand protection against the incursion of crime. It's not just organized crime, of course, because there's always the concern which we hear from the police of the attendant general crime in the community which feeds off the casino, be it thievery, prostitution and other forms, robbery even.

My opportunity, to date, to view the workings of the commission has been, of course, not as a person working inside it, but rather having the opportunity to be briefed on some fairly substantial issues, and I've read a great many of their regulations and their internal documents.

It's the intent of the commission, and it seems to me to be well entrenched at this point, to operate quite differently from how some of the American jurisdictions have in the past. To begin with, I don't believe the industry in this province is created by organized crime, as it clearly was some many years ago in the United States, where organized crime got its handle into the industry very early and very extensively.

Mr Tilson: Sir, they're in it now. I'm sure you've read the news clippings. I have one in front of me from the Toronto Star of December 10, which talks about Caesar's World Inc, which is one of the groups that's going to be running the Windsor casino. This news clipping talks about how on November 17, the very day the government was using its majority in the Legislature to cut short a debate on the Ontario Casino Corp Act, the New Jersey commission had ruled that Caesar's casino in Atlantic City had improperly given more than \$1 million to one of its biggest patrons, and it was a Venezuelan business person. So they're here.

Mr Lewis: They were staking a high roller, I take it. That was my impression.

Mr Tilson: They went on to say, "Caesar's had violated six different regulations, including ones dealing with recordkeeping, gifts, and transacting business with prohibited vendors." These are the people who are going to be running gambling in the province of Ontario. So you are now walking into this position, and I repeat, what are you going to do about it?

Mr Lewis: I repeat, sir, to you that I think we have regulations here which can address that very issue. Without going into the merits of that particular event, which certainly caused me concern, as it did you, I understand that not only is it under appeal, but if it were to occur today, it would not be an offence in Atlantic City. I'm not saying that's a good idea. What I am saying is that the audit provisions and the licensing provisions that I understand exist and are being prepared for the Windsor casino corp will permit random and periodic audit on just these issues.

There's also the issue of SEC filing in the States, in which the money-laundering issue arises, the \$10,000 transaction having to be cleared. I'm informed that there have been corporations in the States which have not filed those reports. Again, this is part of the licensing requirement of the Windsor casino corp.

Mr Tilson: Let me ask one more question, sir. The Windsor police forwarded to Minister Churley, in the summer of 1993, a report dealing with what they believe will be a law enforcement problem if the casino is built. They stated that they're going to need 35 more police officers than they currently can put on the street. At a town hall meeting in Windsor, they found out that they would receive funding for 25 more. Atlantic City has a population of 35,000, 12 casinos, and it's controlled by 400 police officers. Of course, Windsor only has one casino, admittedly, but the population is much higher.

My question to you is, assuming the Windsor police know their job, dealing specifically with the problem of Windsor—I'm now being specific—how will you deal with the potential crime problem in the city of Windsor?

Mr Lewis: The city police of Windsor do have that responsibility very much by statute and expectation. They have asked for 35 officers, not 400, to increase their complement. I think the government's opening bid was 10, and I had heard 25 was the figure to be reviewed as the circumstances develop.

I think comparisons between Atlantic City and Windsor are of interest but sometimes misleading, sir. I think that Atlantic City was a city that was destroyed before the casinos came in. Its infrastructure was in pretty sad shape. Windsor is a city of some repute in this province, one that I even have an office in, in my own present position.

Mr Tilson: And more strip clubs than any city in the country.

Mr Lewis: I agree, and I gather that must be feeding the American market. Be that as it may, it still has a very strong economy, which has been hit lately by the attack on the automotive and other industries, but this is a city of significant substance and significant policing.

In my current job, I have no hesitation in saying that Chief Adkin and his force are very capable of addressing the problems which arise from here, and I would expect that this commission will work closely with any local police force and certainly with Police Chief Adkin on the matters.

Only two weeks ago, I was talking briefly to the deputy chief of that city. There are issues, there's no question about it, and they're going to have to be dealt with. I would hope to be open, as chair of the board, should you consent to that, to receiving and addressing any issues raised by the Ontario Association of Chiefs of Police or individual chiefs of police.

Mr Tilson: What do you think of the relationship between the Ontario Lottery Corp, the Ontario Casino Corp, the Ontario Racing Commission and charitable casinos?

Mr Lewis: Well, as I understand, by statute there is no relationship between the OLC and these others, and

certainly not the casino or the Gaming Control Commission. They are distinct; they're discrete entities. If the question is, ought they to be, I'm not sure of that.

I know there's been a lot of emphasis in government recently, and I think this committee is probably working on it too, rationalizing the explosion of agencies of government and finding some interconnecting means of reducing them and perhaps thereby serving the public better and more cost-effectively. The racing commission and the gaming commission are in the same ministry.

Perhaps your question is this, sir, and if I'm wrong, please correct me: I know there are concerns about casino gambling affecting the charitable gaming industry and reducing the income which they have come to depend upon by reason of the failure of their traditional sources. I think that's something that the Gaming Control Commission would want to be alive to, would have to look at when looking at issues of licensing within, for instance, the charitable industry itself. I think that's an industry that has to be tightened up as to who is licensed.

Mr Tilson: Should all of the operations be amalgamated?

Mr Lewis: That's the question you were asking? That would make some sense, but I'm not—

The Acting Chair (Mr Alvin Curling): Thank you, Mr Tilson. Mr McLean.

Mr Allan K. McLean (Simcoe East): Mr Lewis, I wanted to ask you a few questions. It has to do with regard to the position that you're now assuming on the Gaming Control Commission and whether you're aware of the bingo halls that are established and being established. There's a great need for the charities that the bingo halls raise the funds for. Are you aware of how the Gaming Control Commission looks after allowing new bingo halls to be established?

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Mr Lewis: I don't have detailed information; however, I do have an overview of the needs of charities and I think that I could say this: that, as potential chair of this commission, I would have great concern that the whole charitable industry and its commercial gaming component be watched and regularized very carefully.

As you know, it was under the entertainment standards branch previously, and that's been rolled in, the gaming part, to the commission. I think, given that 98% of the licences are issued by municipalities, the need for centralized licensing and recognition of the needs of legitimate charities is very much of an important feature for the commission. I would hope that I, as chair of a board yet to be created, with the supportive staff, could be very helpful to the charitable gaming industry, because I think it's a very big need.

Mr McLean: I want to bring to your attention, so that you'll know as you take over as chair after today, a bingo hall that has been established in the town of Penetanguishene. It's the first one in Ontario that I know of that is divided; it's got fans, a non-smoking area, it is one of the nicest ones that I know of. They have a C licence for three nights a week. They have applied for an A licence.

The opposition in the area has issued a complaint

saying there's not enough need for another bingo hall. They've had their lawyer write a letter and the ministry has taken the step now of saying, "You have to do a study for \$20,000." The Orsers have forwarded a cheque to the ministry for \$20,000. The ministry is saying, "We will decide and determine who does the study and when." Orser, Angel Gate, has no control over who is going to do their study.

They have a book here that's got all the feasibility studies that have ever been needed to establish the hall and the ministry has said, "We've got to do another study to determine whether you should have an A licence or not," and they indicate, "We can even pull the licence that you have now as a C," if they determine they could do that. I don't know how a ministry could ask them to do a study without any input from the company.

Mr Lewis: You have the advantage over me on that situation, but I think that clearly is going to be an area for the commission to be in constant communication with the stakeholders, which include the various persons and companies in the gaming industry.

You raise issues of fairness here, it seems to me, procedural fairness, and I can't comment on whether or not they've been met but I've had the experience in my current position, knowing that if you err on procedural fairness you're in big trouble.

Mr McLean: I've certainly brought it to the minister's attention. She's well aware of it. The company that's objecting to it is a large one. They have about 10 different establishments in the province. They don't want opposition. I find it hard to believe that the ministry would make them go through a study, which they've already done, a feasibility study. They wouldn't have spent millions of dollars on their hall if they hadn't done a study. I wanted to bring that to your attention.

Mr Lewis: I could undertake to you that, should my candidacy meet with your approval, that would be a matter of early interest to me.

Mr McLean: The other questions that I have pertain to the availability of bingo halls, because we're going to get a lot of requests. I understand there's a large store in Orillia that's out of business and they're wanting to put a bingo hall in there. Highway 11 between Barrie and Orillia, a food store is out of business; they want to put a bingo hall in there.

I wanted to bring this to your attention because I think we're going to have some major requests, especially from the charities that cannot get into the ones that are already there. I have a feeling that the bingo halls are going to be a large part of your job when you get in there.

Mr Lewis: Yes. Well, again, I see the whole charitable gaming industry as a matter of principal concern and one I need to learn a great deal about.

Mr Tilson: I guess I'm still concerned with the impressions on crime. There is a concern out there, sir, and, with respect, you are saying that the system is there to stop it. We understand that the casino project team consulted widely with law enforcement agencies, the people in Windsor and the people in Peel, to ensure that there would be a minimal chance of organized crime at

the casino. However, at least five of the proponents shortlisted for the casino project failed to file proper IRS forms. Negotiations continued with these proponents. I've commented that at the very time the voting was going on in the House, Caesar's was being raked over the coals.

I, as a member of this committee, and I think the people in this province want some assurance—particularly the people in Windsor, where it's now a reality—want to know that there isn't going to be any crime there. Now, you've said that the structure is there. Tell me what the structure is in there, when you already know that one of the people running it has been convicted in the United States.

Mr Lewis: That caught my attention. I think that event was perhaps a learning experience for the investigation team in the commission, although as I understood it, and I'm not fully apprised of this, there was an awareness but a lack of recognition of the significance of the event. I don't think that would be repeated, should I have the chair of that commission.

Mr Tilson: How won't it be repeated?

Mr Lewis: Because I think that would have to be considered as a very relevant factor. I'm not presuming to say that it would necessarily preclude the approval of a licence at this stage—I'm not fully familiar with all the circumstances; I simply am not in the job—but I certainly see it as relevant.

Mr Tilson: You see, we're going to be talking gambling casinos across this province.

Mr Lewis: Yes, we are.

Mr Tilson: This is going to happen over and over; we're guaranteed.

Mr Lewis: What we have, though, is a very good system of investigation, of required exploration of interested parties, of their directors, their officers and of persons who have equitable interest in them which is really quite extensive. There is an opportunity here not only to check them on what they are; there have even been extensive interviews with the heads of the corporations—for instance, in the existing consortium in Windsor, those three companies. They have been interviewed with a view to considering simply what kind of people run these organizations at the very top.

Am I saying to you that there will be no attempt to do anything improper? No, I'm not saying that, sir. I've been in the criminal justice system for 30 years. I am saying that with vigilance they can be stopped, and I believe this is an opportunity which is being well prepared to that end. I quite agree with you that this province and its citizens and its legislators have every right to demand that that be done with vigour.

Mr Tilson: I wish you luck.

Mr Lewis: Thank you.

Ms Carter: Welcome to the committee. There was a very nice write-up about you in the Star on Sunday, of which I'm sure you are very well aware.

Mr Lewis: He was generous, Ms Carter.

Ms Carter: I gather you've been thoroughly checked and investigated and everything else.

Mr Lewis: By the police.

Ms Carter: You must be Mr Ultimately Clean, I think.

Mr Alvin Curling (Scarborough North): I'll bet he's been checked.

Ms Carter: I understand from the article that you voluntarily gave up your prospects of completing your career as a judge—

Mr Lewis: Yes, I did.

Ms Carter: —and the full pension that would have been involved, so I think we have to congratulate you on all those points.

Mr Lewis: Thank you.

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Ms Carter: Why do you see yourself as a good candidate for appointment as this chair?

Mr Lewis: I have had almost 30 years of experience in the criminal and administrative justice system and I've had the opportunity of being a judge, required for six and a half years to not simply be an advocate but also to actually adjudicate between competing interests and arrive at fair and open decisions, hopefully. I've had the opportunity, for the last eight and a half years, to be the head of a pretty contentious and challenging government agency in its own right, which had some very serious issues to deal with over the years and still continues to. I think those are experiences which give me an awareness on a number of levels that will be useful in this position.

I think I have the background to chair a commission, to begin with, a tribunal, if you will. I have, I hope, the skills to work within the administrative law requirements. I know about law enforcement, I know about crime, and, whatever might be thought to the contrary with some of the disputes I've had with the policing community, I work very well with the policing community throughout this province and in fact in the last year and a half have been actively engaged with the Ontario Association of Chiefs of Police in negotiations in my current job. I share the concerns that have been raised by Mr Tilson and others, and I care about this province and how it is affected by legalized gaming.

I believe, with respect, that I have the skills that might be useful to what is already a very capable team in the Gaming Control Commission in curbing the incursion of crime and indeed stopping it. This industry is both important and troubling, and that's the kind of challenge I think I could fulfil.

Ms Carter: The casino project team had various choices it could put before the government about how this should be set up. It could have been a single agency that regulated and managed, and what we actually have is a regulatory agency and a business corporation. This being the case, could I ask you to comment on what is the actual mandate you will have and whether you think this division between business and the regulation side is a good way to go and will be effective.

Mr Lewis: If I may answer that first, I think the division is imperative. I believe very strongly in dividing certain functions, and that's one reason I left the bench in

order to do my current job. I think there are certain things that cannot be done appropriately by one person or one body.

The Ontario Casino Corp is a business and is going to be responsible for the running of Windsor and any other casino in the sense of choosing it and making economic decisions. It is not, therefore, the right body to do the regulation of the industry and indeed in itself will require some looking at by the regulatory body. The business of business belongs one place and the business of regulation in another.

The commission itself has a mandate to ensure the honesty and integrity of the industry for the public interest of the province of Ontario. As chair of the commission and of the tribunal, I would have the obligation by statute to advise the registrar and the director of gaming control upon request and have the power to hold public hearings when appropriate in furtherance of that role.

The specific power of the tribunal is to set the rules of play and also to exclude certain persons from the casino when appropriate, in accordance with the criteria in the regulations.

I should also point out to you that there is authority for the registrar to transfer the registrar's functions to the commission, the tribunal itself. That's a very important potential for this commission. That involves the licensing, punishment and revocation of licences of all operators within the industry, be they casino operators, key employees, gaming-related suppliers or otherwise and so on. So the commission is really quite an extensive body with rather extensive power which has to be used very carefully.

It's extremely important that a regulatory agency react appropriately to certain circumstances, that it doesn't overreact. I think the role of the commission is to provide the stakeholders—and I see them as the elected representatives of the province, including and maybe particularly the municipal representatives, the charitable industry, the commercial gaming industry and the public—with a predictable regulatory scheme, one that operates within a narrow and known band of activity so that people know what to expect. It's the obligation of the commission to ensure that the gaming public gets a square deal, that they know what to expect, that they know what the odds of the games are and that they will be assured of that.

Also the commission will, I would hope, have a role on an issue that I know has arisen, that is, compulsive gambling. It's one that troubles me. I've personally done a literature search on the issue, and I have started to assemble literature for my study on it. That's an area in which I understand the government is making a commitment to put moneys aside for research and education and perhaps rehabilitation, but it's something the commission might be able to assist on as well.

I want to make the point that I'm not for a minute suggesting that the casino is the cause of compulsive gambling. It already exists. It's a pathology of its own. But obviously any gaming opportunity can enhance that danger. I think government and the agency have a responsibility to address it. We have a very real responsi-

bility to ensure that advertising of a casino is done in an appropriate way. It must not be seen to induce gambling, and it must not, assuredly, be seen to pander to underage would-be gamers. It shouldn't do certain things. I think the commission will have a very real role in policing the advertising of gaming. I've gone on rather long. I'm sorry.

Ms Carter: That was very enlightening. As has been pointed out, you're responsible not just for the casino but for the whole charitable gaming scene we already have. There already are problems with people breaking the law and running off with money and so on even in that context.

Mr Lewis: Doing which? Breaking the law and—

Ms Carter: Running off with money. We've had problems in my own area of Peterborough with charitable gambling. I'm sure you will make as good an attempt as anybody possibly could to get it clean and keep it clean. Do you think you're going to be able to succeed right across the board in keeping crime to an absolute minimum?

Mr Lewis: This industry, like any other, has got to deal with human beings, and the capacity of human beings to do wrong as well as good is infinite. Do I think we can police well? Yes, I do think we can police well. Do I think we can address issues such as—well, you mentioned the running off with money. If by that you mean the robbery like occurred in Toronto, the commission has already responded to that very quickly.

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I think it's important that in the charitable industry there be a rationalization of what has been a very fast growth, and the commission is going to have to get, if it isn't already, on top of that. Charitable gaming is obviously extremely important to the people of this province for its revenues. It's important that the commercial gaming industry be a clean one, because it supports the charitable industry. While the commission will never be able to ensure, nor is it its business to ensure, profit in charitable gaming, it should be able to ensure fair dealing by the commercial gaming industry for the charities it serves. That includes not running off with the proceeds, if that's what you were speaking of. I think we could act in fairly swift ways in that area.

Ms Carter: The project team had various possibilities as to how this could be set up. I believe there were about four ways it could have been done, such as 100% government-owned or 100% private and so on. Of course, what was decided on was government-owned but privately operated, so that the government gets the profit and the operator gets an operating fee. I just wondered if you would like to comment on that.

Mr Lewis: You mean, do I approve?

Ms Carter: Whether you think that is a sound basis.

Mr Lewis: As I read in the debates on another issue, that train has already left the station. That's the model for the Windsor casino as such. Should there be other casinos, that could change. This was a model. Does it attract me? I know politics is always a bet, and not always a safe one, but I don't think the government is

necessarily the best equipped to run a casino.

Ms Carter: But if we move to aboriginally run casinos, it might be a totally different setup.

Mr Lewis: Yes, it might. I understand there has been a commitment to a native casino and that bids for that have been made. I agree with you: I think that will raise whole new issues of a great variety. I believe the commission will have a very real role to play in native gaming, and indeed it's anticipated that the tribunal itself will have representation from the native community, along with other relevant groups, like law enforcement and so on. But I think this is a proper model at this stage, yes.

Ms Margaret H. Harrington (Niagara Falls): Thank you for coming, Mr Lewis. I want to let you know directly what my position is. I represent the city of Niagara Falls, and it certainly is an international destination. You may know we get over 10 million visitors a year, and I believe we're actually entering a new era with regard to tourism locally: Things are changing, upgrading.

Part of my rationale for saying that, yes, Niagara Falls is an appropriate place for a casino is that we certainly need that economic stimulus, that it is a place to bring in foreign currency with these many foreign visitors we have, and third, that gaming is a legitimate entertainment and, as such, can be seen as part of tourism.

What I want to ask you are some of the reflections of my constituents in Niagara Falls. The first thing that comes up is the image of Atlantic City, these types of concerns that were also raised from across the floor. I believe we have a unique culture and heritage in Ontario and the people have a way of looking at things, and we want whatever casino operations are here in Ontario to reflect that heritage and culture. I'm wondering what your feelings are about how the casino gaming will be different from other places.

Mr Lewis: I don't think it will be the *raison d'être* of the community. Atlantic City exists literally for the casinos. I mean, they sit there on the boardwalk and that's Atlantic City, and God help you if you go too far away from there. Reno, although it's got the University of Nevada, is very much a casino city, and so are Las Vegas, Laughlin. I don't anticipate that this will be the Ontario experience. We are talking communities of long standing, with their own infrastructures, their own mores and expectations for their community. I don't believe casinos can be grafted on and necessarily undermine. I think they will be there, but they will not fuel or drive the community.

Ms Harrington: Can you pinpoint any description of our casinos that would be intrinsic to the Ontario experience?

Mr Lewis: I believe they will be policed in a different way. For instance, dealing with the Windsor experience, the commission itself will have a policing presence in the Windsor casino, and the surveillance systems in the Windsor casino, I understand, are extraordinarily state-of-the-art. Interestingly enough, they are double systems. You have the Windsor casino corp, with its basic and extensive video surveillance process, but the OPP contin-

gent will have an override video surveillance. In other words, they will be able to observe the activities of the casino in a manner that is unknown to the Windsor casino corp. We have a policing check attached to the commission which will, I think, be unique in casino gambling.

Ms Harrington: My constituents certainly believe it must be done carefully here, must be done correctly here. We obviously have the advantage of looking at everything that has happened so far and the process as it unfolds in Windsor and seeing how it is done. We have to have, I believe, in this province a great respect for your commission.

Following from Mr Tilson's comments about the crime aspect, is there any evidence, if we look at, say, the casino in Montreal or the casino in Winnipeg, that there has been organized crime involvement in those, to your knowledge?

Mr Lewis: I'm not aware of any, but we have to fairly say that they're different structures. Neither of those has the strong American ties that Windsor casino corp will have, either through its consortium or through its audience; it's anticipated that the Windsor casino will draw 80% of its audience from the American states. But I do say it's clear that the Canadian experience in casino gambling has been a good one so far, and the opportunity to share the benefits of that history is very real.

I might also say that there have been agreements signed with both Nevada and New Jersey on sharing of information with the Ontario gaming commission. There will be—there already is, actually—knowledge by us, if I may use the term, by the commission, of the bad sides they have in their gaming commissions. Nevada and New Jersey have extensive experience, obviously, and they have agreed to supply information on persons, corporations and practices, which would be very, very helpful.

Ms Harrington: I just want to reiterate that it is so important in what you are doing that we have the utmost confidence in this commission.

Do you see it in the mandate of your organization to look at the impact on the social fabric of the community where a casino is located?

Mr Lewis: Yes. As you know, the legislation requires that when a casino is created, there be a community advisory committee. But the social impact is something that interests me very much, and to the extent that I can shape the mandate of the commission, and I think there will be an opportunity for the tribunal to do that, the whole issue of social impact is an important one and should be one of interest to the commission. In so far as it raises opportunities to limit inappropriate behaviour, then it's a very proper commission mandate.

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Mr Curling: Mr Lewis, here you are again in a challenging position, something you've never shied away from, and your ability is well known. It's part of your nature to deal with the sometimes controversial aspects of things.

I just want to understand some of this, so I'll go into it very quickly. I want to understand the Gaming Control

Commission. It says there are five members on this commission.

Mr Lewis: Minimum.

Mr Curling: A minimum of five, and then it's the five members who select the chair and the vice-chair. When I read it here it says "five members appointed by the Lieutenant Governor in Council...who also designates the chair and vice-chair."

Mr Lewis: The Lieutenant Governor designates the chair and vice-chair.

Mr Curling: So you have been selected by the Lieutenant Governor, so to speak, the cabinet, in order to come before us.

Mr Lewis: I haven't gone the full route yet.

Mr Curling: To acquire this job, you come before us for us to make this great decision about whether you should be that chair.

One of the concerns I have and one the things you'll be handling is the charitable organizations too. I'm just going to take that part of it, two areas there, maybe three: bingos, for instance, with about a million dollars' worth of business going through the enterprising opportunities they give; raffles also, which I think generate about a half-million dollars in business; and now you have the video lottery out there.

Will this formation give the charitable organizations a fair share? The reason I ask is that today a charitable organization depends very much on raffles etc, and as the government comes into casinos, some of the people are worried that it's the only hope they have to raise money to do charitable things. Do you think this will impede them or make it more difficult for them to get licensed, or will it assist them?

Mr Lewis: I understand the concern of the charitable industry about the advent of casinos. For that matter, I understand it was a concern of the racing industry. The competition was seen to be formidable, and it's a legitimate concern.

In so far as casinos are concerned, I believe that the Windsor casino corp's target audience is really not the normal target audience of the charitable gaming. It's very much an American, out-of-province target. One can never know if the estimates are going to be accurate, but as I mentioned earlier, it's estimated that 80% of the business will come from the American states, and these are not persons who would normally come in to play the charitable gaming, the Monte Carlo nights and so on. If that holds, it would be relatively little impact, and it may indeed be a very different type of gambler or gaming person who attends the casinos.

It cannot be denied, it seems to me, that there will perhaps be some impact on charitable gaming by casino gambling, depending on the extent of it. We don't know what that's going to be yet.

For that reason, it is very important that the charitable industry be heard, that the licensing of charities be very carefully regulated, that it be limited to legitimate charities, that there be a centrally controlled regulation of who gets licences to run charitable events, because that

can be a bleed-off too. It's not so hard to think of how you might have people purporting to be in the charitable industry who aren't really charities, and they are a major concern to the legitimate charities, for whom you have, quite properly, concern.

Will there be an impact? Perhaps, but I think it's going to be the role of the commission, to some degree, although we are not the economic driver in this industry, to see that the marketplace is fairly run and operates so that all participants in it have a fair shot.

Mr Curling: One of the strategies of the casino establishment, especially in Ontario, is to put it at the border, especially in areas where the population is large. It is said we're trying to attract—somehow the argument always comes—those from the other side of the border. Funnily enough, many from this side go over there to gamble.

Mr Lewis: That's true.

Mr Curling: Therefore, sure, it may give the impression to the people of Ontario: "We're really putting this casino in because we need some of those American dollars. A lot of people want to come and gamble over here, and we can get some good bucks out of that." As a matter of fact, it does have an impact on those who now may not go over there to gamble but stay in Ontario and gamble. It also has that impact on gambling.

Mr Lewis: Sure, but I don't know that that's a bad thing. Keeping our dollars at home is not so bad.

Mr Curling: Okay. Going to other countries, many countries don't allow the residents to even participate in casinos. The argument is, "We don't want in any way to create an addiction to this with our residents." I hear this argument that gambling is bad, and since it's that bad, "We will only have the foreigners," like in Nassau, "come and gamble," and nobody in Nassau can gamble. When we are here, we say we want the other people over there to come with their money.

In the meantime, I'm hearing other arguments. My feeling is that gambling—you made a kind of profound statement, that casinos are not the cause of compulsive gambling; it already exists. I heard you say that. But the fact is that it feeds into that. Don't you feel we'll have to be dealing with more situations with the crime that's associated with casinos and that the social fabric of that area will, I would say, degenerate in that sense? It will gravitate to people who want to gamble, who are compulsive gamblers etc.

Mr Lewis: I think I agreed with you, Mr Curling, in earlier statements that the advent of casinos raises its own issues, exactly the kinds of issues you're speaking of. While I said that compulsive gambling already exists, I agreed that of course the creation of a casino industry will enhance the potential for falling into it.

I'm interested in this position because I see the problems that are inherent in the industry. Although I've been in casinos in a number of countries, actually, I'm not much of a money gambler. I guess I'm a little risk-averse. Maybe I'm afraid—I don't know—of the potentials of gambling. But it's a very human conduct, it's a very normal conduct, it seems, and we've long since, it

strikes me, gone beyond the purity state of not allowing our citizens to gamble. We gamble in major ways in this province quite legitimately, with the full approval of all governments.

What's happening here is that we have expanded the industry in a way that raises new issues that have to be addressed. I'm not much impressed with countries that would provide an industry to outsiders that it would deprive its own citizens of. I don't think I would feel much admiration for a government that considered an industry to be so sinister that its own people couldn't be involved, but didn't mind trafficking in it. That's like a drug culture sort of thinking. It's not yours; I don't mean to suggest that, sir. I agree there are countries like that.

Ontario has long since chosen to be involved in gaming. To me, it seems the challenge is to ensure that it's done properly and that it's regulated in a way that it never has been. This is an opportunity which is being afforded through the Gaming Control Commission.

I've been invited to chair that commission. I've talked to Deputy Minister Judith Wilson and Duncan Brown, the director, about their views of the mandate and the challenges of the commission. I am most impressed by their command of those issues and by the work they've done to date. I would consider it a privilege to be part of their team in serving the public interest of this province by assuring the honesty and integrity of this industry.

1100

Mr Curling: It's very interesting that you made the comparison between drugs and gambling itself in a sort of addiction situation and not depriving people from doing it in, if you want to call it, a controlled environment. I presume cigarettes and alcohol are the same thing. The government has controlled alcohol very well by having its own outlets.

In the meantime, the other arguments will come that we may have to feed into it later on or to have it dealt with later on by the addiction research people, who are looking at controlling people who have those addictions one way or the other, either for smoking or drinking or gambling itself. It's very interesting.

Mr Tilson actually raised a point which was rather interesting to me and I just want to raise it because he didn't have an opportunity to ask it further. With your commission, I think he did ask somehow whether you will be going around the province to carry the good news, the made-in-Ontario casino stuff, and since it works here, whether you will go up to any other areas to do so. You said yes, or maybe. But I haven't heard the government itself, as he's pointed out, stating that, that you will be the disciple somehow carrying that good news around to say, "This is a good thing to do, and maybe you could do it in other places and parts of Ontario."

Mr Lewis: I think that's a very good question. I am not carrying a brief for casinos. I am not expected to carry the government's intents on casinos if it should intend to expand them. That would be a matter for the Ontario Casino Corp, which reports to the Minister of Economic Development and Trade. The business of the

commission is regulation. I am saying that I am not overwhelmed by the fact that there is a casino. I'm intrigued by it. I see the issues that are raised by it and have been well expressed by yourself and Mr Tilson and others. My job will be to see they're regulated.

You won't find me, if I travel the province—and I'm sure I will; I'll have occasion to through my regulatory responsibilities—being the salesman for casinos. That is not going to be my job and it is not in any way anticipated. I think I'd be in big trouble if I tried.

Mr Curling: My last question to you, and my colleague will be asking some questions after: Let's talk about some of your mandates then. You said what would be your mandate. One of your mandates would be to conduct it with honesty, integrity—and I understand those—and the other part, in the public interest. What would be in the public interest in a casino, in gambling? How would we see that conducted in the public interest? Help me understand that part.

Mr Lewis: The public interest really is served by the industry operating with honesty and integrity. The casino is obviously intended to be a revenue-generating institution for government. That's a fact of this structure in this case.

The public interest will be served by ensuring that the operator of that casino operates it in a legitimate fashion that makes sure that the government is fairly treated, as the owner of the casino. It is imperative that those people who attend in the casino know what the rules are and feel confident that the games are operated in a way which is explained and fair and known, that the odds are rational or at least that the minimum payouts are known, which is the odds.

The argument as to whether gambling can ever be in the public interest is of course the argument which the House had, but the fact of gambling is here. It's a fact of life in North America and it certainly is now in Ontario. The challenge for the public interest is to ensure that those who are engaged in the industry—be they the operators, the employees, those who serve the industry, that is, the suppliers and the trade unions that get involved—are above reproach and that they're financially creditable institutions or people, that they are not infiltrating the industry. That's the role of the commission, and it's the role I hope to be able to assist the commission in fulfilling.

Mr Curling: Good luck.

Mr John C. Cleary (Cornwall): Welcome to the committee, Mr Lewis, and for answering your questions in the way they were asked.

I'm still concerned about the violence casinos attract. We've had some bad experiences in our part of eastern Ontario on a native reserve. We're very concerned about that, and we're concerned about the cost of law enforcement. I think some of the problems that we're having yet there were created by that.

I guess the other thing that many of my constituents and constituents across Ontario are concerned about is the waiting list charities have to get a licence at bingo halls. I guess we all have great service clubs in our commun-

ities and they're very worried about their ability to raise funds, because there are only so many dollars in the communities. We're very concerned about that.

You went on to say that we might not have to worry about some of these problems to do with policing because it would be done in a different way. I'd just like your comments on some of those.

Mr Lewis: Mr Cleary, you're from Cornwall, I believe.

Mr Cleary: That's right.

Mr Lewis: I appreciate your awareness of some of the issues that have arisen in that community, and they are of concern to me.

I believe that crime outside the casino, which we were discussing with Mr Tilson, is something that's going to have to be very much addressed, and I think government will have a responsibility to assist local police services to meet that challenge.

Now I know that's always a matter of negotiation and I'm not blind to the realities of police boards and local councils having to fight with provincial government for more than their policing grant, for instance, to meet new challenges. But it seems to me that if a casino comes into a community, one can presume, and one will soon know through Windsor, what the outside ramifications of that are in terms of crime.

Maybe I'm out on a limb here. I don't speak for government on this, but I, as a member of the commission, for instance, would not hesitate to advocate that government be very open to the policing needs of the community.

I've been in the policing and law enforcement business for quite a long time and I have some familiarity with the negotiating that goes on for extra police for every which reason, but I think this is a legitimate one that's going to have to be looked at very closely and I think you've raised the issue well.

I am frankly encouraged by Chief Adkin's assessment of the implications of the casino, because they don't seem extreme to me, given the size of his force and the policing capacities of that community.

Going to your other point of the impact on charitable gaming, I think I've emphasized that I consider that to be a very real issue. I think a very important role for the commission will be ensuring that appropriate charities are able to get licences in a reasonable time for legitimate purposes.

I can't speak to what the ultimate effect of casino gambling will be on the charities. I think some of it will be there and some of it may not be, because of markets and so on, and appealing to different types of gamblers.

But it's a major concern to me that the commercial gaming industry, which supports the charitable industry, be tied down very, very closely so that it does not exact an inordinate amount of money from the moneys which are collected for charities under these Monte Carlo nights and so on, and raffles, and secondly, that those who are licensed as charities to have games are appropriate charities—and that's going to be a tough call—and that

their licensing is done in a quick manner so that they don't suffer the kinds of delays that you're talking about.

1110

I think what's happened to some degree is that in the last two years there has been an enormous explosion in charitable gaming in this province, and the entertainment standards branch, I suspect, as I was in my present role as police complaints commissioner, was overwhelmed by the growth. When I was public complaints commissioner in Toronto up until 1991, we got 1,000 complaints a year, and overnight I got 4,200. I didn't get the staff to go with it, I have to tell you, for many, many months. You have to learn how to cope with that.

I think this commission is now well under way in that regard, but I think your issue is real, I think it must be addressed, and it would be a matter of great concern to me.

The Vice-Chair: Thank you, Mr Lewis, for appearing before the committee this morning. We've run over our time. We wish you well.

Mr Lewis: May I ask a question, Mr McLean? I go to Vancouver tomorrow morning. I'm on the board of governors of the Canadian Centre for Police Race Relations, and it may be my last board of governors meeting, but I don't get back till Sunday.

As you know, my own office is a little bit in limbo. I've delegated all my authority to my legal director, who is intended to be the acting commissioner. It was hoped that if this committee approved, I would begin my responsibilities Monday in the new job. I'm going to be away. Would I have any way of knowing what the intent of the committee is on this?

The Vice-Chair: You'll know in half an hour.

Mr Lewis: Oh, all right.

The Vice-Chair: I'm sure that it will be approved because there's never been one that hasn't been.

Mr Lewis: Well, that's faint praise, sir.

The Vice-Chair: I would be one who would endorse the recommendation that you be approved and then you will be notified within a day or two.

Mr Lewis: Thank you, Mr McLean.

Mr Tilson: And he's a Tory.

The Vice-Chair: Thank you for appearing. You can be assured you'll be in your new office on Monday.

NANCY BACKHOUSE

Review of intended appointment, selected by the government party: Nancy Backhouse, intended appointee as vice-chair, Grievance Settlement Board.

Ms Nancy Backhouse: Good morning.

The Vice-Chair: Do you have any opening statement? If not, we will go right into questions.

Ms Backhouse: I don't, other than to throw myself on your mercy and say I find this process somewhat intimidating.

The Vice-Chair: Well, you may get to enjoy it in a minute. The government party has asked you to come. Who's first?

Mr Robert Frankford (Scarborough East): I'll try.

Welcome. We don't intimidate here. You're on the board currently, I understand.

Ms Backhouse: I've been mediating for the Grievance Settlement Board for approximately five years, but I think the official term is grievance settlement officer, which is to be distinguished from a vice-chair, which is what I'm hoping I'll be approved for.

Mr Frankford: Yes. So you are, in your current role, quite familiar with the workings of the board.

Ms Backhouse: As a mediator. I have also been doing some labour arbitration, so to that extent I'm familiar with what the role of a vice-chair is and how that will be different from the responsibilities that I have had as a mediator.

Mr Frankford: The legislation has changed, I understand, so that there will be some differences in what you're operating under now. Could you sort of briefly outline what you see as the major changes?

Ms Backhouse: All right. I guess one obvious one is the restriction on the board from making orders that alter job classifications or require the government to create new job classifications.

That has been an order that I'm advised is granted as often as two or three times a week. The Grievance Settlement Board has been making orders that require the government to either find or create job classifications because they've found that grievors have not fitted within the existing job classifications.

That's now been basically stopped by this amendment, and the replacement, I think, that is to be made is that a committee may be established and both management and unions will be working together to try to come up with a new job classification system, which I think will result in really a more orderly method of dealing with what is quite a quagmire and a problem.

Mr Frankford: Do you have any thoughts on how that's going to affect the workload and the content of the work of the board?

Ms Backhouse: I think with the addition of 2,000 more employees into OPSEU, which was the byproduct of supervisors now coming within CECBA, the Crown Employees Collective Bargaining Act, they're not going to be short of work. The job classification business has been shut down, but I think with the addition of those new bargaining unit members, there's going to be still plenty of work to be done.

Ms Carter: I believe there's some problem about who pays for the activities of the board. Any comments?

Ms Backhouse: Yes. My understanding is that prior to the recent CECBA proclamation, the GSB acted as a crown agency, but it's now more like a joint responsibility of both management and labour where the unions are being asked to contribute to half the cost of proceedings.

The crown is being required to pay for their appointee and the unions are being required to pay for their appointee, but then they'll both be required to pay for the costs of the chair or vice-chair who's sitting on a particular grievance, and for the administration.

It seems to me that's likely to make a more responsible

kind of structure that certainly will be required to take into account the views of both sides and where the kinds of grievances that are brought forth are ones that really require arbitration, need to be arbitrated, are important issues, as opposed to matters that really are such that they're a bit of a waste of time.

Ms Carter: So everyone will be interested in keeping the expenses and the activities to a reasonable minimum.

Ms Backhouse: Precisely.

Ms Carter: Perhaps you'd like to tell us something about your qualifications for the job and how your background does make it appropriate.

Ms Backhouse: All right. I've been a practising lawyer approximately 15 years. I started out with a small law firm called Kronby, Chercover and became a partner there in—I can't remember when. It was a while back. In 1986, I joined the law firm of Fraser and Beatty and became a partner there in 1988.

I'm the complaints officer for the Association of Professional Engineers of Ontario and have been a lay appointee, appointed by the Lieutenant Governor in Council to be a bit of a public watchdog, I guess, in essence for the engineers. I'm on the board of the Victorian Order of Nurses. I am a director of the Advocates' Society, which is the group of civil trial lawyers in Ontario.

I successfully completed the Ministry of Labour arbitrator development course and I have been specializing in litigation with a primary focus in family law but am expanding my practice to do labour. I've been mediating for five years for the Grievance Settlement Board and I'm hoping to do more labour.

Ms Carter: Okay. Thank you very much.

The Vice-Chair: Thank you, Ms Backhouse, for appearing before the committee today. We wish you well.

Ms Backhouse: Thank you very much.

The Vice-Chair: The committee determination of whether or not the committee concurs on intended appointees we have reviewed today—some of you we don't know. The last one we had on our list missed the bus, so she will not be appearing before us.

Interjection.

The Vice-Chair: We understand that she can be passed on. We're not going to request that she come back, if that's agreeable. If we could have a motion to concur with the ones we have dealt with this morning.

Ms Carter: So moved.

The Vice-Chair: Concurred? All in favour? Opposed, if any? The motion is carried. They're confirmed.

The clerk has something she wanted to raise.

Clerk of the Committee (Ms Lynn Mellor): Yes. I wanted to indicate to you that Ms Paine was scheduled to be reviewed on April 27. She couldn't make it on April 27, but she is available on May 4, so she will be scheduled in on May 4.

The Vice-Chair: Thank you. The subcommittee will now meet.

The committee adjourned at 1121.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

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***Harrington, Margaret H.** (Niagara Falls ND)

Malkowski, Gary (York East/-Est ND)

Mammoliti, George (Yorkview ND)

Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)

***Witmer, Elizabeth** (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Hope, Randy R. (Chatham-Kent ND) for Mr Mammoliti

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/ Prince Edward-Lennox-Hastings-Sud ND)
for Mr Malkowski

Tilson, David (Dufferin-Peel PC) for Mrs Marland

Clerk / Greffière: Mellor, Lynn

Staff / Personnel: Pond, David, research officer, Legislative Research Service

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Third Session, 35th Parliament

Assemblée législative
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Troisième session, 35^e législature

Official Report of Debates (Hansard)

Wednesday 27 April 1994

Standing committee on
government agencies

Intended appointments

Committee business

Chair: Margaret Marland
Clerk: Lynn Mellor

Journal des débats (Hansard)

Mercredi 27 avril 1994

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Travaux de comité

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GOVERNMENT AGENCIES

Wednesday 27 April 1994

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX

Mercredi 27 avril 1994

The committee met at 1020 in committee room 2.

INTENDED APPOINTMENTS

The Chair (Mrs Margaret Marland): Good morning. We have one intended appointment to review. Although this is a selection by the official opposition, they have asked us to proceed and they will have someone here by the time the rotation comes around to them to ask questions.

HAROLD ARNOLD

Review of intended appointment, selected by official opposition party: Harold Arnold, intended appointee as member, police services board, town of Shelburne.

The Chair: I'd like to welcome Mr Harold Arnold. If you wish, you may make a brief opening statement, but it's not necessary. We can just start with our questions by the committee members.

Mr Harold Arnold: That'd be fine.

Mrs Elizabeth Witmer (Waterloo North): Welcome, Mr Arnold. My question is going to focus on employment equity. As you know, police services are now required to have implemented and put in place goals and timetables to achieve employment equity, and I'd like your views on employment equity.

Mr Arnold: That is a very good idea. Every—perhaps I should say “minority,” but not even minority; everyone should be represented on the police force. However, I don't feel someone should be hired solely on that basis. I believe they need to have the qualifications for that job.

Mrs Witmer: Are you aware of what is happening within your own community in terms of how they are going to meet those goals and those timetables?

Mr Arnold: I'm afraid not.

Mrs Witmer: What do you think the board can do to encourage people from the designated groups—women, visible minorities, aboriginals and the disabled—to apply to become members of the police force?

Mr Arnold: I guess it's a matter of advertising in those particular types of places to try and attract those candidates. You try to offer as good working conditions as you can. Other than that, I really—

Mrs Witmer: You've made a good point. Your suggestion is that advertising take place in the type of communication vehicles those individuals would be reading or would be seeing. In a town such as Shelburne, I'm not sure what mix of population you might have.

There has been some concern recently about the handling of wife assault and there are some new guidelines that have been put in place. Do you have any

comments about how the police should deal with that particular issue?

Mr Arnold: That's one of the main problems of Shelburne and I think of most communities at this time, that the incidence of assault in general is increasing. I'm not sure what your guidelines say—I have no idea what they say, actually—but no one should be subjected to assault. However, putting down violence with violence is somewhat defeating also, but if it comes to that, it comes to that. I certainly think the police should be trained somewhat in that aspect of dealing with the community.

Mrs Witmer: In taking on this position, what do you feel you bring to the position? Why do you wish to serve in this capacity?

Mr Arnold: I guess the bottom line is that my wife thinks we should be getting more involved in the community and that's one of the main pushes behind it. Also, it's my community and I wish to serve there.

Mrs Witmer: Have you lived in the community of Shelburne for a long time?

Mr Arnold: I've lived within the town limits for the past seven years and I've farmed outside the town limits since day one. I've been there all my life.

Mrs Witmer: So you have an understanding of the rural community as well as the urban setting of Shelburne that would enable you to do your job and reflect the viewpoint of the people in that particular community?

Mr Arnold: I like to think so. Yes.

Mr Allan K. McLean (Simcoe East): I want to welcome you to the committee, Mr Arnold. I have a background as a farmer too, so I know where you're coming from—

Mr Arnold: Hey, I can sell you some maple syrup.

Mr McLean: —and I know that common sense will prevail. I just want to welcome you here.

This committee picks out people to appear before us to give us a little overview of what they want to get involved in and how they want to serve their community. I understand you want to serve it through the police services board, and I congratulate you for offering your services and I wish you the best.

Mr Arnold: Thank you.

Mr Daniel Waters (Muskoka-Georgian Bay): I had a couple of questions. You have six uniformed officers in your town. I was there not too long ago when we were doing the funding of renovations to the town hall. The police had to move out of there, right?

Mr Arnold: That's correct.

Mr Waters: Do they have a place in the interim where they have a high profile in the community?

Mr Arnold: Yes. There's another building that's being used by the police and by the municipal offices. Police housing is something Shelburne needs. It's lacking, and it's one of the issues we'll have to address.

Mr Waters: I believe with your new town hall, if everything goes as planned, it will be addressed in that new complex.

Mr Arnold: We're hoping it comes around, yes.

Mr Waters: I come from a small town, as Mr McLean does; well, Al's is like a city compared to you and I. Probably one of the largest events in central Ontario happens in Shelburne, and I look at the police force of six. I'm curious, how does it go? These people obviously would be working overtime and then some.

The Chair: And we always want tickets, right?

Mr Waters: The answer to that one is yes. Is it a problem for the local force, or do you contract with the OPP? How do you deal with that?

Mr Arnold: It's contracted with the OPP. It takes a fair added supplement to control that crowd.

Mr Waters: I don't whether I should get into this or not, but I'm going to ask the question anyway. I spent some time in the community when I was there and we talked about a number of things. I know there has been some, shall we say, controversy within the community over the last number of years about whether indeed you will keep your own police force or contract full-time with the OPP, I believe it is. I was wondering if you have an opinion on which way it should be.

Mr Arnold: Personally, I'd like to see us keep our own police force. It has that certain flair and familiarity you can achieve with people you know. However, the dollars talk loud, and we have to take that into consideration also. Even the fellow who ran for mayor in Shelburne campaigned on the concept of having our own police force, but I think he's since changed his mind since he's become mayor. It's something I'd have to have all the facts on before I really have a concrete answer, but personally I'd just as soon try and keep our own little force. It's doing an excellent job. They're moving into the schools trying to establish a contact there and they're a fairly high-profile bunch.

Mr Waters: During my visit I had an opportunity to talk to them, and they're very community-oriented and seemed very proactive. As a person whose town went from its own town police to the contract situation, make sure you write in very carefully, if you ever do it, that they will be patrolling your streets in street patrols and all those things, because it took us 20 years to get that back. The OPP would drive through town, but we didn't have street patrols for 20 years. I remember growing up, where, if I misbehaved in town, nothing was done, necessarily, but the phone call went home and I knew about it when I got home. They knew me and I knew them. So, yes, I would worry about losing that. It's part of what makes Shelburne a beautiful little community.

How many support staff would you have for that? Do you have any idea?

Mr Arnold: I have no idea, really. I haven't been involved enough in that particular aspect to really know. I can't think of the word. You call it in and they're sent out; it's done through an Orangeville answering service, like an after-hours type of thing.

1030

Mr Waters: On all the calls, you have contracted out to an answering service that beeps them or runs through on the radio?

Mr Arnold: Yes.

Mr Waters: They gave us a lot of research, the police report for 1993 and this year. I find it interesting that you live so close to Toronto and—you would think you would be very much urbanized by now, the influence of the big city, but what I'm seeing is not that at all. I'm seeing a community that still lives, as we all wish we could, in a nice, rural community where they seem to care about each other. Vandalism is probably the biggest thing on the whole list—mischief is what they call it. We have that in our small towns too.

I wish you well. By looking at your CV, I see you've been a farmer in the area and a mechanic and you work with a children's camp and all those things. Obviously, you are a very active member of your community, and a lifelong member. By the looks of this, your family has been there for some generations. I wish you well. Here's hoping you keep your force.

Mr Arnold: Thank you. We've done quite well so far because we've managed to cash in on Kincardine. They contracted their police force out to the OPP, so we managed to pick up their cruiser fairly reasonably and a few other pieces of equipment. Hopefully, we're going to stay a while.

The Chair: Thank you for appearing, Mr Arnold.

Mr Arnold: My apologies for being late. I just got into a lot of traffic this morning.

The Chair: That was fine. We all had the same problem today and we certainly understand.

Would someone like to move the motion? Moved by Mr Waters that Mr Harold Arnold be appointed as a member of the police services board for the town of Shelburne. All in favour? That is unanimous.

COMMITTEE BUSINESS

The Chair: Now we're into a little bit of house-keeping before we adjourn. We did have a report on the Ontario Food Terminal Board that came to the committee two weeks ago that was approved by the committee. However, I suggest that perhaps we hold that approval, because it contains conflicting recommendations. Perhaps we didn't do all our homework on it. I would like to suggest that the researcher, Mr Richmond, come back and receive the input and comments from the committee members about which recommendations they would like the report to contain, because it doesn't make any sense to proceed the way it is. It would be the morning of May 11 that we would like to schedule that.

The other issue is that Mr Curling has a conflict in being able to be here from May 3 to May 19; he will be away. To deal with the Ontario Human Rights Commis-

sion, which was the official opposition's choice of agency to review, we need to have him here to complete that report, so that report will now be dealt with on Wednesday, June 1.

First, what about the Ontario Food Terminal?

Mr Waters: On the food terminal, I agree. It was pointed out after we passed it, unfortunately, in some discussion I had with legislative research, that in the body of the report we had missed a number of things as a committee that we should be picking up and giving some direction on. I have no problem at all with rescheduling that and tidying up that report. I think all committee members would like to see a nice, tidy report that sets a direction. The way it is is really, "What if you do this or this?" There were options that weren't indicated, so I think we all need to look at that.

On the other one, I take it there is no one else in the Liberal caucus who can cover for Mr Curling? It's dragging out. These things have a tendency to drag out. We've had this situation before where, for one reason or another, there was always somebody who couldn't show up, and in one case it ended up in excess of a year to write a report which was done at one or two meetings.

The Chair: But let's just deal with this report. The point is that Mr Curling is the critic for his party. His party did select this agency. This has not been a review that's been going on for a year; it hasn't been dragged out at this point. And we do have a precedent, I think, for courtesy to members of all committees of all parties. There are certain things in our lives that are scheduled and then the legislative agenda changes for a number of reasons and there often are conflicts. I don't think to grant this courtesy of finalizing the report on OHRC, in my opinion, is asking too much of the committee. It's not going to make any real difference to the outcome of the report, and they should all be tabled together anyway.

Mr Waters: Then what I would—

The Chair: Excuse me, just to complete what the clerk is advising me. The document would be the 20th report of this committee, and that report would include all three agencies. So to do it professionally coming from this committee, I think we should plan to do it that way.

Mr Waters: What I would like to do is put a motion on the floor that indeed it be June 1, that that is a firm commitment to do it on that date, and if Mr Curling or someone can't be here, I would hope they indeed have someone up to speed to do it.

The Chair: Bear in mind that that's obviously a very important report to all of us from all caucuses for all the work we do in our ridings. If all caucuses consider what they want that report to represent in terms of their opinions and their direction for that agency, then we would be prepared on June 1 to go through it in a very constructive way. Sometimes what happens is that we don't always get that work done in the committee. I think it would be worthwhile for all us to come prepared for that discussion on June 1.

You're moving that we deal with reconsideration of the Ontario Food Terminal report on May 11?

Mr Waters: Madam Chair, also on the 11th, if there

is time, it's my understanding—because we're now on the record—that we're hoping the Ombudsman is today tabling a report or something like that. If that could be made available to the committee members as soon as possible, all committee members then would be able to come June 1 with their recommendations or their positions based not only on our report but on the report of the Ombudsman, which some people might want to reflect on. Rather than coming in that day and saying, "Oh, I've just got the report; I need time," and then another delay, we could come in to do some constructive work on the June 1.

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The Chair: That's an excellent suggestion, and in fact our clerk is ahead of us. She has already been to that committee's clerk and found that the report being tabled by the Ombudsman is a public document, and our clerk is going to obtain copies for each of the members of this committee as quickly as possible. You will have it for probably a month, three weeks, anyway, ahead of June 1, so when we come in on that day you will have that extra tool, as part of the review material, to deal with the draft on June 1.

So your motion would be that we reschedule June 1 for the Ontario Human Rights Commission report as a firm date, regardless of which members can attend the meeting.

Mr Waters: Yes, Madam Chair.

The Chair: The only change would be anything in the House that would cause precedence for a change in that—you know, like calling an election. Anyway, is there any discussion of that motion? All in favour of that motion? Thank you.

So we're straightforward now in terms of what we're going to deal with on May 11 and on June 1.

Also, the subcommittee wants to have an in-depth discussion about the work of this committee. We're wondering if that subcommittee meeting could take place following our next appointment reviews. We have three appointments on May 4, and that would give us half an hour at least to discuss the work of the committee.

Mr Waters: We do this once or twice a year, and I think it's a good time to do it. There has also been some discussion informally about the fact that we're finishing off the agencies, boards and commissions we've reviewed, and what are the next ones we're going to look at? Maybe, as we have that subcommittee, we can have some discussion about where we're going on that as well.

The Chair: Also, the members have been talking in the last couple of months about the possibility of going back to the old format of this committee, which is doing in-depth, worthwhile reviews of agencies and spending the committee time on that, instead of just the review of appointments when the House is sitting.

Mr Waters: I concur. I think we have done a bit of that in this sitting of the House, but I've always argued that to pick appointments just for the sake of picking someone—and today is an example. There was a lot of thought that went into it before Mr McLean picked his appointment today. Historically, we haven't all always

done that. We've just: "Oh, we each have to pick one." I really am a strong believer in the fact that what we should be doing is picking when we feel we need to pick someone, and if there is an hour or an hour and a half, maybe we can work on one of our reviews at that point.

The Chair: The thing is, and I'd like to hear what Mr McLean feels about this, that we can't do it in a haphazard way. We can't say, "This month we've got an hour and a half left; we could do a review." It has to be formally decided about which agencies we are going to review because those agencies have to prepare for that review and prepare material for the committee and presentations for the committee. It does have to be structured ahead of time.

Mr Waters: I agree. I'm saying that if there were someone we wanted to pick, it would almost become a reversal of what's happened: They would be scheduled around our review.

The Chair: That's a possibility.

Mr McLean: Well, the review process is the phoniest process that's ever gone on in this Parliament, and there doesn't really seem to be much point in picking them just to have them in, from what I've observed over the past few years. I mean, there's never been one turned down yet. All we do is review what the government's done. The public may believe it's a process whereby you can call people in if you want to, but that doesn't say they're ever going to be turned down because they're not a fit appointment. The fact is, we're dealing with them after they've already been appointed.

So probably the emphasis should be on doing more reviews of agencies, boards and commissions, because

that's what this committee was intended to do. For a long time we fought for and wanted to have a separate committee that would look into the appointments, in which it would have some say. You'd pick three and they would deal with picking one of those, like the process they've just gone through with the Environmental Commissioner. That was picked by the committees and I understand it was unanimous. Those are the types of processes I'd like to see done in reviewing people.

The process is flawed now, and I think we should be putting more emphasis on dealing with the agencies that really should be looked at. You remember when we had Mr Kruger in here, who talked about all the different agencies, boards and commissions, that at least if they know there's a chance they could be called, that was a plus.

The Chair: Would you like to have the discussion about the work of the committee with the subcommittee and then take it to the full committee?

Mr Waters: That's probably a valuable thing to do. Mr McLean and I in some ways agree and in other ways disagree on this process that has been set up. But I also think there are things we've talked about doing before, looking at how things can be done better, and that's a job for the subcommittee. I would move that we leave this discussion for now and bring it up again in sub when we have that in-depth discussion about where the committee's going to go and what its priorities are going to be.

The Chair: So we'll discuss it on May 4, which is next week. Great. Thank you very much.

The committee adjourned at 1048.

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STANDING COMMITTEE ON GOVERNMENT AGENCIES

- ***Chair / Présidente:** Marland, Margaret (Mississauga South/-Sud PC)
- ***Vice-Chair / Vice-Président:** McLean, Allan K. (Simcoe East/-Est PC)
 - Bradley, James J. (St Catharines L)
- *Carter, Jenny (Peterborough ND)
 - Cleary, John C. (Cornwall L)
 - Curling, Alvin (Scarborough North/-Nord L)
- *Frankford, Robert (Scarborough East/-Est ND)
 - Harrington, Margaret H. (Niagara Falls ND)
 - Malkowski, Gary (York East/-Est ND)
- *Mammoliti, George (Yorkview ND)
- *Waters, Daniel (Muskoka-Georgian Bay/Muskoka-Baie-Georgienne ND)
- *Witmer, Elizabeth (Waterloo North/-Nord PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Hansen, Ron (Lincoln ND) for Ms Harrington
Wilson, Gary, (Kingston and The Islands/Kingston et Les Iles ND) for Mr Morrow

Clerk / Greffière: Mellor, Lynn

Staff / Personnel: Pond, David, research officer, Legislative Research Service

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